24-101

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~1100~~. 711 338 116

CORNELIUS GUMBEL, PLAINTIFF IN ERROR,

vs.

JOHN R. G. PITKIN, UNITED STATES MARSHAL, KERBS AND SPIESS, L. BAMBERGER AND COMPANY, B. DREYFOUS AND COMPANY, D. W. STADEKER AND COMPANY, ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 17, 1884.

[redacted]

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INDEX.

	Original.	Print.
Caption	*a*	1
Petition	1	1
Order for writ of attachment	5	2
Writ of attachment	5	3
Marshal's return	6	3
Notice of seizure and return	9	4
Garnishee notice and return	10	5
Citation to Jos. Dreyfus	12	5
Marshal's return	13	6
Motion for default	13	6
Exception	14	6
Motion to dissolve attachment	15	7
Order overruling exception, disallowing motion for default, and exception to be treated as answer	16	7
Motion to dissolve continued	17	8
" "	18	8
" "	18	8
Waiver of jury	19	9

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	Original.	Print.
Order overruling motion to dissolve	20	9
Judgment for plaintiffs	20	10
Order to sell	22	10
Writ of fieri facias	22	10
Marshal's return	24	11
Petition and supplemental petition of intervention and third opposition of C. Gumbel	27	12
Document filed with intervention	40	15
Motion of Gumbel for stay of sale refused and intervention fixed	47	17
Supplemental petition of intervention and third opposition of C. Gumbel	47	17
Order to file petition	49	18
Answer of Elias Block & Sons to intervention and third opposition of C. Gumbel	50	18
Answer of Ed. Dubois to intervention of Gumbel	51	19
Answer of Fairbanks & Duening to intervention of Gumbel	52	19
Order fixing Gumbel's intervention	52	19
Default on intervention of C. Gumbel	53	19
Exception and answer of C. Lazard to intervention of Gumbel	54	20
Exception and answer of Wm. Adler to intervention of Gumbel	56	21
Answer of H. Weiller & Co. *et als.*	58	21
Second supplemental petition of intervention and third opposition of C. Gumbel	63	23
Order to file second petition	66	24
Answer to second supplemental intervention for Jacoby & Co., H. Weiller, and Freiberg & Workum	67	24
Exception and answer to supplemental petition of C. Gumbel	69	25
plaintiff's to supplemental petition of C. Gumbel	71	25
Kerbs and Spiess	76	26
Continuance of intervention	76	26
Answer of E. Dubois to intervention	78	28
Fairbanks & Duening to intervention	79	28
Exception and answer of Stege & Reiling	81	29
Hearing and continuance of intervention of C. Gumbel	83	29
Exception and answer to supplemental petition of Gumbel	85	30
Hearing and submission	85	30
Bill of exceptions	86	31
Transcript from civil district court in Gumble *v.* Dreyfus	88	32
Petition	89	32
Bond	92	33
Statement	93	33
Order for attachment	93	34
Attachment	94	34
Citation	95	34
Supplemental petition	96	35
Interrogatories	97	35
Citation to garnishee	99	36
Return to citation	101	37
Return to attachment	101	37
Notice of seizure	102	37
Return to notice	103	38
Notice of seizure on garnishee	103	38
Return to notice	104	38

	Original.	Print.
Exception of Pitkin, marshal	104	38
Order on exception	105	39
Order of default	105	39
Motion to dissolve	105	39
Judgment	107	40
Fieri facias	108	40
Return to fi. fa.	109	41
Notice of seizure	109	41
Return to notice	110	41
Rule for contempt	111	42
Return to rule	112	43
Rule on Pitkin, marshal	112	43
Return to rule	117	45
Exceptions to jurisdiction	119	45
Continuance	120	46
Judgments	121	47
Certificate	123	47
Statement of facts	125	48
Rule for new trial	135	51
Marshal's return	137	52
Rule for new trial	137	52
Marshal's return	140	53
Rule for new trial	140	53
Marshal's return	144	54
Continuance	144	54
"	145	55
Submission of rule	146	55
Order refusing new trial	146	55
Judgment	147	56
Motion and order for writ of error	149	56
Bond for writ of error	152	58
Certificates to record	155	59
Writ of error	156	59
Citation to L. Bamberger & Co.	157	60
Petkin, U. S. Marshal	159	61
Dreyfous & Co.	161	62
Stadeker & Co.	163	62
Waddux, Hobart & Co.	165	63
Altschul & Co.	167	64
Kerbs & Spiess	169	65

a UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

HOFFHEIMER BROS., C. GUMBEL, Intervenor and Third Opponent, Plaintiff in Error,
versus
JOSEPH DREYFUS, KERBS & SPEISS, and others, Defendants in Error. } No. 10359.

Braughn, Buck and Dinkelspiel, Esq'rs, attorneys for C. Gumbel, plaintiff in error.

T. J. Semmes & Payne & E. T. Florance, John M. Bonner, T. Gilmore & Sons, H. Hidenhain, A. B. Phillips, J. P. Hornor & F. W. Baker, Chas. S. Rice, Merrick, Foster & Merrick, D. C. & L. L. Labatt, Miller & Finney, Esq'rs, for defendants in error.

Writ of error returnable to the Supreme Court of the United States the second Monday of October, A. D. 1884.

1 *Petition. Filed 29 October*, 1883.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

HOFFHEIMER BROS.
v.
JOS. DREYFUS. } No. 10359.

To the hon. the judges of the United States circuit court for the fifth circuit, eastern district of Louisiana:

The petition of Hoffheimer Brothers, a commercial firm domiciled and doing business in the city of Cincinnati, State of Ohio, and composed of Solomon Hoffheimer, Max Hoffheimer, and Abraham Hoffheimer, all citizens of the State of Ohio, residing and domiciled in the city of Cincinnati, said State, respectfully represents:

That Joseph Dreyfus, of the city of New Orleans, a citizen of the State of Louisiana, is justly and truly indebted unto your petitioners in the full sum of four thousand five hundred and
2 thirteen ^{26} dollars for this, to wit, that petitioners are the holders and owners of three certain drafts, as follows: One draft for six hundred and thirty-seven ^{21} dollars, dated July 3, 1883, drawn by petitioners to their own order upon Joseph Dreyfus, payable four months after date; another draft for twenty-six hundred dollars and $\frac{85}{100}$, dated August 4th, 1883, drawn by petitioners to their own order upon Joseph Dreyfus, of the city of New Orleans, payable four months after date, 1st day of September, 1883; another draft, dated August 4, 1883, for twelve hundred and seventy-five $\frac{20}{100}$ dollars, drawn by petitioners to their own order upon Joseph Dreyfus, and payable six months after date, 1st day of September, 1883, all of which said drafts have been accepted by said Joseph Dreyfus, as

will more fully appear by reference to said acceptances annexed to and made part hereof, the said drafts and acceptances being for goods sold and delivered to said Dreyfus.

3 Petitioners aver that the said Dreyfus has mortgaged, assigned, and disposed of, and is about to mortgage, assign, and dispose of his property, rights, and credits, or some part thereof, with intent to defraud his creditors, or give an unfair preference to some of them, and that he has converted, or is about to convert, his property into money, or evidences of debt, with intent to place the same beyond the reach of his creditors, and that said debtor is about to remove his property out of the State before said debt becomes due, and that a writ of attachment is necessary in the premises.

Wherefore petitioners pray that the annexed bond and affidavit considered a writ of attachment issue to the marshal of the United States for the fifth circuit and eastern district of Louisiana, commanding him to attach, seize, and take into his possession all of the property, rights, and credits of Joseph Dreyfus; that said

4 Dreyfus be cited to appear and answer this petition, and that after due proceedings there be judgment in favor of your petitioners and against Joseph Dreyfus in the full sum of four thousand five hundred and thirteen $\frac{26}{100}$ dollars, with interest at the rate of five per cent. on $637.21, from November 6th, 1883, until paid; on $2,600.85 dollars from January 4th, 1884, until paid, and on $1,275.20 from March 4th, 1884, until paid, and all costs of suit, maintaining said attachment with lien and privilege and right to be paid by preference out of the property attached and seized, and petitioners pray for all general and equitable relief.

(Signed) WALTER D. DENEGRE,
BAYNE & DENEGRE,
Attorneys for Petitioners.

Abraham Hoffheimer, being duly sworn, says: That all the facts and allegations in the foregoing petition contained are true and correct.

(Signed) ABRAHAM HOFFHEIMER.

Sworn to and subscribed before me, this 29th day of October, 1883.

(Signed) DON A. PARDEE, *Judge.*

5 *Order.*

Let a writ of attachment issue herein, and as prayed for, on plaintiffs giving bond with security, as required by law.

(Signed) DON A. PARDEE, *Judge.*

New Orleans, October 29th, 1883.

Writ of Attachment. Issued 29th October, 1883.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit, and Eastern District of Louisiana.

HOFFHEIMER BROTHERS
v.
JOSEPH DREYFUS. } No. 10359.

The President of the United States to the marshal of the United States for the eastern district of Louisiana, Greeting:

You are hereby commanded to attach and take into your possession, according to law, the property, rights, and credits of the defendant, Joseph Dreyfus, that may be found within our said district, to satisfy the claim of the plaintiff, Hoffheimer Brothers, amount-
6 ing to the sum of four thousand five hundred and thirteen & $\frac{26}{100}$, 637.21 of which will mature Nov. 6th, 1883, $1,275.20 on March 4th, 1884, and 2,600.85 on January 4, '84, dollars, with interest thereon at the rate of — per cent. per annum, from the — day of — until paid, and costs, and to hold the same, to satisfy the judgment of the court in the premises.

And of your acts and doings herein that you make due return, according to law. Hereof fail not.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 29th day of October, 1883.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

Marshal's Return.

Received October 29, 1884, by the U. S. marshal, and immediately on receipt of this writ levied the same on all the contents of the store and the warehouse by the defendant occupied, and situate No. 33 Tchoupitoulas street, in the city of New Orleans, the said property being at that time in my possession,
7 by virtue of other process issued out of this hon. court, and of said seizure I notified the defendant in writing. I also did, on the same day, made general seizures by garnishment process in the hands of Lehman Mayer and Messrs. Mayer, Weill & Co., which firm is composed of Mayer, Weill, and David Levi, as will more fully be seen by reference to the annexed notice of seizure and the return thereon, marked A for reference; from said garnishee seizure nothing came into the U. S. marshal's hands up to date. I also on the same day made a seizure of the following-described real estate: A lot of ground, with all the buildings and improvements thereon, situated in square bounded by Josephine, Prytania, Jackson, and Colliseum streets, described as the lot No. 8 of said square in the late suburb Lafayette. Said lot measures 60 feet front on Josephine street by a depth between parallel lines of 120 feet, and is situated 60 feet
8 from the corner of Prytania street, notifying the defendant of said seizure in writing, and also caused said seizure to be re-

corded on the same day at the office of recorder of mortgages, parish of Orleans, and city of New Orleans, and subsequently all of the merchandise contained in No. 33 Tchoupitoulas street, was sold by virtue of three different orders of sale issued out of this hon. court in this cause, and in suits entitled No. 10355 & 10356, Krebs & Spiess, and Maddux, Hobart & Co. *v.* this defendant. Reference is specially made to the return of the order of sale herein issued, and to the process verbal thereunto attached. A writ of *fieri facias* was herein issued and is now in the marshal's hands for execution, and the same is levied on the proceeds of sale above referred to, which proceeds of sale are also levied upon by virtue of various other writs and orders issued from this hon. court. They are held subject to final judgment as to — is entitled to them. Not all the property herein seized has as yet been disposed of. This return is written up to this 14th day of February, 1884.

Notice of Seizure to Joseph Dreyfus and Recorder of Mortgages Attached to Marshal's Return.

U. S. Circuit Court, Eastern District of Louisiana.

HOFFHEIMER BROS. *v.* JOSEPH DREYFUS. } No. 10359.

To Joseph Dreyfus and the recorder of mortgages for the parish of Orleans and city of New Orleans:

You are hereby notified that by virtue of a writ of attachment issued out of the above-named court in the above entitled and numbered suit, and to me directed, I have this day seized and taken into my possession the following described property to pay and satisfy the said writ, amounting to the sum of $4,513.26 or thereabouts:

Description of Property.

A lot of ground, with all the buildings and improvements thereon, situated in square bounded by Josephine, Prytania, Jackson, and Coliseum streets, described as the lot No. 8 of said square in the late suburb Lafayette. Said lot measures 60 feet front on Josephine street, by a depth between parallel lines of 120 feet, and is situated 60 feet from the corner of Prytania street.

New Orleans, Oct. 29, '83.

(Signed) E. S. WURTZBURGER,
Deputy Marshal.

On October 29th, 1883, I served a copy of the within notice of seizure on Joseph Dreyfus, defendant, by handing the same to him in person in the city of New Orleans.

(Signed) DAN. A. ROSE,
Deputy U. S. Marshal.

Garnishee Notice, Attached to Marshal's Return.

UNITED STATES OF AMERICA:

United States Circuit Court, Eastern District of Louisiana.

HOFFHEIMER BROTHERS
v.
JOSEPH DREYFUS. } No. 10359.

To Lehman Meyer and Meyer, Weill and Company, composed of Meyer, Weill, and David Levy:

11 Please take notice that, by virtue of attachment issued in the above-mentioned suit, I seize in your hands all the goods, chattels, lands, tenements, rights, and credits, moneys, effects, bills of exchange, promissory notes, or property of any kind which you may now have or hereafter have in your possession or under your control, belonging to the defendant, Joseph Dreyfus, which you will hand over to me.

U. S. marshal's office, New Orleans, Oct'r 29, 1883.

(Signed) DAN. A. ROSE,
Deputy Marshal.

On October 29th, 1883, I served copies hereof on the persons herein served in the following manner, to wit:

Lehman Meyer, personally; Meyer Weill & Co., personally on Meyer Weill; Meyer Weill, personally; David Levy, personally.

All served in the city of New Orleans on the date above set forth.

(Signed) DAN. A. ROSE,
D'y U. S. Marshal.

12 *Citation to Joseph Dreyfus. Issued 29 October*, 1883.

UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

HOFFHEIMER BROS.
v.
JOSEPH DREYFUS. } No. 10359.

The President of the United States of America to Joseph Dreyfus:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

13 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 29th day of October, A. D. one thou-

sand eight hundred and eighty-three, and of the Independence of the United States of America the 108th year.

[SEAL.] Teste: (Signed) F. A. WOOLFLEY, *Clerk.*

Marshal's Return.

Received November 9, 1883, by the U. S. marshal, and on Nov. 10th, 1883, I served a true copy of the within citation and the accompanying petition of plaintiffs on Joseph Dreyfus, Esq., by handing the same to him and leaving the same in his hands, in person, in the city of New Orleans.

(Signed) J. R. G. PITKIN,
U. S. Marshal,
By E. S. CURRY,
D'y U. S. Marshal.

Motion for Default.

Extract from the Minutes, November Term, 1883.

NEW ORLEANS, THURSDAY, *November* 22*d*, 1883.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

14 HOFFHEIMER BROS. *v.* JOSEPH DREYFUS. } 10359.

This day, in open court, came Messrs. Bayne & Denegre, attorneys for the plaintiffs herein, and moved the court for a default against the defendant, and the court took time to advise.

Exception. Filed 24 *Nov.*, 1883.

Circuit Court.

HOFFHEIMER BROTHERS *v.* J. DREYFUS. } No. 10359.

Defendant, as an exception to plaintiff's action, avers that same is premature, the obligations sued on not being due at time petition was filed, and two not being yet due. Wherefore he prays plaintiff's action be dismissed.

(Signed) A. H. LEONARD,
Attorney for Defendant.

Personally appeared before me J. Dreyfus, who, being duly sworn, deposes and says statements made in above exception are true.

(Signed) JOSEPH DREYFUS.

Sworn to and subscribed before me, this Nov. 24, A. D. 1883.

(Signed) F. A. WOOLFEY,
15 *Commissioner United States Circuit Court,*
Eastern District of Louisiana.

Motion to Dissolve Attachment. Filed 24 November, 1883.

Circuit Court U. S.

HOFFHEIMER BROS. v. J. DREYFUS *et al.* } No. 10359.

Defendant J. Dreyfus moves the court to dissolve attachment herein made on following grounds:

1st. Because the affidavit for attachment was not made by any one authorized to make same.

2d. Because said affidavit is not such as is required by law.

3d. Because the bond for attachment is not signed by any one authorized to sign same for plaintiffs.

4th. Because the allegations of plaintiffs' petition and affidavit for attachment are too vague to authorize an order for issuance of writs of attachment.

5. Because those allegations are false.

16 Defendant avers that the action of plaintiffs in causing attachment herein was wrongful, and has damaged him in the sum of two hundred and fifty dollars special damages for counsel fees, and in the sum of five thousand dollars general damages.

He prays that attachment herein made be dissolved, and for judgment against plaintiffs and their securities on bond given for attachment *in solido* for said sums and interest and costs.

(Signed) A. H. LEONARD,
Attorney for Defendant.

(Endorsed:) Jury waived. (Signed) A. H. Leonard, for def'd't. (Signed) Walter D. Denegre, for plaintiff.

Order Overruling Exception, Disallowing Motion for Default, and Exception Treated as Answer, Etc.

Extract from the Minutes, November Term, 1883.

NEW ORLEANS, SATURDAY, *November 24th*, 1883.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

17 HOFFHEIMER BROS. v. JOSEPH DREYFUS. } 10359.

In this case it is ordered that the exception to jurisdiction filed herein on 13th November instant be, and the same is hereby, overruled, and that the motion for a default made by the defendant be disallowed.

It is further ordered that the paper styled an "exception," this day filed, be treated as an answer with leave to the defendant to answer.

Motion to Dissolve Continued.

Extract from the Minutes, December Term, 1883.

NEW ORLEANS, SATURDAY, *December 1st*, 1883.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

* * * * * * *

HOFFHEIMER BROS.
v.
JOSEPH DREYFUS. } 10359.

For want of time, it is ordered by the court that the demurrers, motions, and other proceedings in the above-entitled and
18 numbered cases be continued until Saturday, December 8th, 1883, at 10 o'clock a. m.

Motion to Dissolve Continued.

Extract from the Minutes, November Term, 1883.

NEW ORLEANS, SATURDAY, *December 8th*, 1883.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

HOFFHEIMER BROS.
v.
JOSEPH DREYFUS. } 10359.

By consent of counsel the defendant's motion to dissolve is continued to the 19th instant at 11 o'clock a. m.

Motion to Dissolve Continued.

Extract from the Minutes, November Term, 1883.

NEW ORLEANS, WEDNESDAY, *December 19th*, 1883.

Court met pursant to adjournment.
Present: Hon. Edward C. Billings, district judge.

HOFFHEIMER BROS.
v.
JOSEPH DREYFUS. } 10359.

In the presence of counsel for both sides, it was ordered by the court that the cause lay over till Friday, 21st instant, at 11 o'clock a. m., and the witnesses were notified to be present in court
19 on said adjourned day.

Waiver of Jury.

Extract from the Minutes, November Term, 1883.

NEW ORLEANS, WEDNESDAY, *December* 19, 1883.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

HOFFHEIMER BROTHERS
v.
JOSEPH DREYFUS. } 10359.

This cause came on to be heard on the defendant's motion to dissolve the attachment herein.

Bayne & Denegre, Miller & Finney, and Walter D. Denegre for plaintiffs; A. H. Leonard and Morris Marks for mover.

And thereupon the counsel for the defendant did, then and there, in open court, dismiss the defendant's claim for damages except for counsel fees.

Whereupon the parties having filed a stipulation waiving the intervention of a jury, the said motion came on to be heard before the court, and was argued by the counsel for the parties respectively and submitted; when the court took time to consider, and gave defendant's counsel until Friday next to submit authorities.

Order. Motion to Dissolve Overruled.

Extract from the Minutes, November Term, 1883.

NEW ORLEANS, FRIDAY, *December* 21, 1883.

Court met pursuant to adjournment.
Present: Hon. Edw'd C. Billings, district judge.

HOFFHEIMER BROS.
v.
JOSEPH DREYFUS. } 10359.

The parties in this suit having heretofore filed a stipulation waiving the intervention of a jury, and, after argument, submitted to the court the defendant's motion to dissolve the attachment herein, and the court having considered the same and being fully advised of and concerning the premises, now orders that the said motion be refused and that the attachment be maintained.

Judgment for Plaintiffs.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana. November Term, 1883.

NEW ORLEANS, FRIDAY, *December* 21*st*, 1883.

Court met pursuant to adjournment.

21 Present: Hon. Edward C. Billings, district judge.

HOFFHEIMER BROS.
v.
JOSEPH DREYFUS. } 10359.

The parties in this cause having filed a stipulation waiving the intervention of a jury, and submitted the cause to the court upon the issues of fact, as well as of law, and the court having considered the evidence, and being fully advised, finds the issues of fact raised by the pleadings in favor of the plaintiffs. It is therefore ordered, adjudged, and decreed that the plaintiffs, Hoffheimer Bros., do have and recover of and from the defendant, Joseph Dreyfus, the sum of four thousand five hundred and thirteen $\frac{26}{100}$ dollars, with interest at the rate of five per cent. on $637.21 from November 6th, 1883, until paid; on $2,600.85 from January 4th, 1884, until paid, and on $1,275.20 from March 4th, 1884, until paid, and all costs of suit, with privilege upon the property attached, reserving question of liability of garnishees herein.

Judgment rendered December 21st, 1883.

Judgment signed January 12th, 1884.

(Signed) EDWARD C. BILLINGS, *Judge.*

22 *Order to Sell.*

Extract from the Minutes, November Term, 1883.

NEW ORLEANS, THURSDAY, *January* 3*d*, 1884.

Court met pursuant to adjournment.

Present: Hon. Edw'd C. Billings, district judge.

HOFFHEIMER BROS.
v.
JOSEPH DREYFUS. } 10359.

On motion of Bayne & Denegre, of counsel for plaintiffs, and on suggesting to the court that the expenses incurred daily in keeping the goods and property under attachment are heavy and daily increasing, and that orders have been heretofore entered in the case of Kerbs & Spiess *v.* Dreyfus and another case directing the sale of part of goods;

It is ordered that all of the property under attachment after due proceedings be sold by the marshal, as provided by law and in accordance with the order entered in the case of Kerbs & Spiess *v.* the same defendant, and at the same time, with goods ordered sold in said case.

23 *Writ of Fieri Facias. Issued* 12 *January*, 1884.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Fifth Circuit, holding sessions in and for the Eastern District of Louisiana.

HOFFHEIMER BROS.
v. } 10359.
JOSEPH DREYFUS.

The President of the United States to the marshal of the eastern district of Louisiana, or his lawful deputy, Greeting:

You are hereby commanded that you demand from the defendant, Joseph Dreyfus, the sum of four thousand five hundred and thirteen $\frac{26}{100}$ dollars, with interest at the rate of five per cent. per annum on $637.21 from November 6th, 1883, until paid; on $2,600.85 from January 4th, 1884, until paid, and on $1,275.20 from March 4th, 1884, until paid, and costs,

Clerk's costs ..... $——.
Att'ys' fee $10,

cash, which Hoffheimer Bros. lately recovered by judgment of the circuit court of the United States for the fifth circuit and east-
24 ern district of Louisiana, and if the same be not paid on demand, that then you cause the same to be made out of the personal estate of the said Joseph Dreyfus in your district, if sufficient personal estate can be found therein; but if sufficient personal estate cannot be found in your district, that then you cause the same to be made out of the real estate of the said Joseph Dreyfus in your district, and that you have those moneys before our said court to render to the said Hoffheimer Bros. for the judgment aforesaid on the 70th day from the date hereof, together with this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 12th day of January, A. D. 1884, and 108th year of the Independence of the United States.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

Marshal's Return. Filed March 20, 1884.

Received January 12th, 1884, by the U. S. marshal, and levied this writ on the proceeds of the sale made by the marshal by virtue of order of sale herein made; and also in the causes No. 10355 and No. 10356 of the docket of this honorable
25 court, entitled respectively Kerbs & Spiess *v.* Joseph Dreyfus, and Maddux & Hobart & Co. *v.* Joseph Dreyfus, on January 21st, 1884, and subsequent days, which proceeds of sale of the merchandize sold in No. 33 Tchoupitoulas street in this city, being the contents of the store occupied by the defendant, amounting to the sum of ($16,820.87) sixteen thousand eight hundred and twenty $\frac{87}{100}$ dollars, as will more fully appear by the return on the said order of sale issued in this cause, to which reference is made, said sum being greater than the amount of the within writ, but a number of other writs emanating from this hon.

court all levied upon the property seized or the proceeds thereof and in the United States marshal's hands. Special reference is made to the writ of attachment herein previously issued and
26 to the return thereon. This writ expiring before the proceeds of the said sale were distributed, I have made this return and request the clerk of this honorable court to furnish me with a copy thereof together with this return for the purpose of further proceedings in conformity to law. No other property found after due demand made of the defendant and of plaintiffs' attorneys.

Returned March 20, 1884.

(Signed) J. R. G. PITKIN,
United States Marshal, Eastern District of Louisiana.
By ED. S. WURZBURGER,
Deputy U. S. M'l.

27 *Petition and Supplemental Petition of Intervention and Third Opposition of C. Gumbel. Filed January 18th*, 1884.

HOFFHEIMER BROS.
vs.
JOSEPH DREYFUS. } No. 10359.

To the honorable the judges of the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

The petition of intervention and third opposition of C. Gumbel, a citizen of the State of Louisiana, resident of the city of New Orleans, with respect shows to this honorable court that on the 27th of October, 1883, he instituted suit in the civil district court for the parish of Orleans, under the number and title C. Gumbel *vs.* Joseph Dreyfus, No. 9662, to recover the sum of twenty-three thousand one hundred and eighty-four $\frac{37}{100}$ dollars from one Joseph
28 Dreyfus, a resident of the city of New Orleans and State of Louisiana, the defendant in this suit, and incidentally thereto sued out and obtained from said civil district court a writ of attachment, which was executed by a seizure of the defendant's property, more especially of the contents, fixtures, stock of goods and merchandise, etc., contained in store No. 33 Tchoupitoulas street, which seizure was effected by the service of proper notice and the taking of the property by the civil sheriff of the parish of Orleans, on Monday, the 29th day of October, 1883, who placed his keepers in possession thereof and in possession of the premises No. 33 Tchoupitoulas street aforesaid, in which the same were contained.
29 Your opponent and intervenor shows, further, that subsequently, and in due course of law, a judgment was rendered in his favor for the amount claimed as aforesaid, with interest and costs, and maintaining the attachment previously issued, with lien and right of preference on the property attached. Shows, further, that subsequently, to wit, on the 5th day of December, 1883, said judgment having become final and executory, a writ of *fi. fa.* was issued, and the said sheriff of said civil district court was directed to again seize under said writ the property held under the aforesaid

writ of attachment, and sell the same to satisfy opponent's judgment, and said sheriff again seized and levied on said property.

30 That said sheriff has, ever since the execution of said writ of attachment, held said property under the seizures made on said 29th day of October, and latterly under both it and the seizure made in execution of the writ of *fi. fa.* And opponent and intervenor further shows that said sheriff is obstructed in the execution of said writ or writs, and this opponent prevented from realizing the full effect and fruits thereof by the U. S. marshal of this circuit and district, or his deputies, acting or pretending to act under authority of this honorable court, in the execution of writs of attachment and *fi. fa.*, issued herefrom at the suits of the following parties, to wit:

31 Kerbs & Spies, T. Altschul & Co., B. Dreyfus & Co., Maddux, Hobart & Co., William Adler, Corning & Co., C. Lazard, Elias Block & Sons, H. Miller & Co., J. Anduran & Co., Lachman & Jacobi, A. Gunther & Co., Edmond Dubois, Fairbanks & Duening, Freidburg & Workum, Isaac Hays, D. M. Stadeker & Co., L. Bamberger & Co., John Osborn, Son & Co., Arpad, Haraszthy & Co., H. A. Batzer & Co., S. Jacobi & Co., Stege & Reuling, and Hoffheimer Bros., all severally suing said Joseph Dreyfus for the amounts of their respective claims, the first suit, according to the docket of this honorable court, being that of Corning & Co., No. — thereof.

Intervenor and third opponent now further shows that in point of fact and law the seizure made by the sheriff of the civil

32 district court for the parish of Orleans, in the suit and under the writ aforesaid, was anterior to that made, or attempted to be made, by the marshal of this court in the said suits of Corning & Co., or in any of the suits filed in this honorable court against said Joseph Dreyfus, and thereby said sheriff acquired the sole legal custody and control over said property, and the said civil district court became vested with jurisdiction over said property and the distribution of its proceeds; but said sheriff and said court are unable to enforce to their just and legal results the rights of opponent, by the fact that said marshal interferes in the

33 control and possession of the property and refuses to allow the sheriff such undisputed control as will enable him to sell same, and deliver it to the purchasers. And your opponent and intervenor further shows, to the end that all and fully the facts material to a decision or the rights of all parties concerned may be had, that on the morning of the 29th of October, 1883, when the sheriff as aforesaid made his seizure, he found at the store, and claiming to exercise rights of possession and control, persons who styled themselves deputy marshals of this court, and petitioner believes and avers that they were such, who pretended and asserted that they were in charge as keepers, and in execution of writs of attachment issued from this honorable court in said

34 cause of Corning & Co. *vs.* Dreyfus, and in all or some other of the causes in which the parties hereinbefore named are plaintiffs and said Joseph Dreyfus defendant. Opponent avers that at said time of seizure made by him no valid or legal writ

had issued from this honorable court; that the writ or writs under which said marshal or his deputies were holding, or pretending to hold said property, issued in this cause and others aforesaid, had been issued on a *dies non*, to wit, Sunday, the 28th day of October, 1883, which said writs were absolutely null and void, both at common law and under the statute law of Louisiana, which, in this regard is binding and conclusive on this honorable court, and all said writs so
35 issued on Sunday, October 28th, 1883, by voluntary discontinuance and the decisions of this court; and petitioner shows that said marshal has now no writs in his hands, except such as were issued and executed by him subsequently to the writs issued by the civil district court in behalf of opponent and executed as aforesaid; that the seizure, if any, made by said marshal is subsequent to that effected by the sheriff and is null and void, and vested the court with no power or jurisdiction over the property.

Petitioner shows further that he applied, by motion and rule, to the civil district court setting forth in substance the facts and allegations herein averred, and prayed that the marshal of this
36 court be ordered to desist from interference and allow the execution of the writs to proceed; that the proceeds ought to be distributed by the said civil district court; a copy of said rule is annexed and filed as part hereof, and said rule was discharged and the relief prayed denied, upon the grounds that the civil district court was incompetent and without power to decide on the legality of the possession of the marshal and for other reasons, but the right of mover was expressly reserved to renew his suit in this honorable court.

And opponent avers finally that said marshal or his deputies were on the premises seized at the time the writ by the sheriff was executed, as mere trespassers, without
37 warrant of law and without any valid authority from this court, and the subsequent execution of valid writs could not deprive or divest the rights acquired by petitioner under the seizure effected by the civil sheriff before any valid writ was placed in the hands of the marshal. Opponent shows further that some of said plaintiffs have obtained final judgment and have issued writs of *fi. fa.*, and under a writ issued in the suit of Hoffheimer Bros. *vs.* Joseph Dreyfus, No. 10359 of the docket of this court; the property in controversy is about to be sold by the U. S. marshal of this district. Opponent shows that Joseph Dreyfus is utterly insolvent; that no other property is liable to seizure, sufficient to pay judgments against him, has or can be found, and the property under
38 seizure is not sufficient in value, after payment of costs, to pay the judgment of third opponent and other creditors of Dreyfus, who have sued out at the same time in the same manner and with the same results, writs of attachment and execution from said civil district court, the property seized being worth about twelve to fifteen thousand dollars.

Wherefore opponent and intervenor prays that this petition of intervention and third opposition be filed; that J. R. G. Pitkin, marshal of this honorable court, and Kerbs & Spies, T. Altschul & Co.,

B. Dreyfus & Co., Maddux, Hobart & Co., Lachman & Jacobi, A. Gunther & Co., Edmund Dubois, Fairbanks & Duening, Freiburg & Workum, Isaac Hays, D. M. Stadeker & Co., C. Lazard, Elias Block & Sons, H. Muller & Co., J. Anduran & Co., Wm. Adler, Corning &
39 Co., L. Bamberger & Co., John Osborn Sons & Co., Arpad, Haraszthy & Co., H. A. Batjer & Co., S. Jacobi & Co., Stege & Rueling, and Hoffheimer Bros., attaching and seizing creditors, do show cause on —— the — day of January, 1884, why the property now held by the marshal, and advertised for sale, should not be restored to and placed in the hands of the civil sheriff, to be sold under writs of execution issued as herein set forth, that the proceeds may be distributed by the civil district court, and that an order be allowed, that sale advertised to be made for January, 1884, be stayed until the further order of this court, or, if this order be refused, and it be finally held that said sale should not be stayed, that the proceeds of said sale be ordered to be paid over to
40 the civil sheriff *sheriff* of the parish of Orleans, to be distributed by the civil district court of said parish, and they pray for such other and further aid, remedy, and relief as the nature of the case may require and law and equity permits; and as in duty bound, etc.

(Signed) BRAUGHN, BUCK & DINKELSPIEL,
Of Counsel.

Order.

Let this petition of intervention and third opposition be filed.
(Signed) EDWARD C. BILLINGS, *Judge.*

Document Filed with Intervention of C. Gumbel. Filed January 21st, 1884.

Division B. Civil District Court.

C. GUMBEL
vs.
JOSEPH DREYFUS. } No. 9662.

On motion of Braughn, Buck & Dinkelspiel, attorneys for plaintiff, and on suggesting to the court that a writ of attachment
41 be issued herein on the 27th of October, 1883, was executed by seizure of the property of the defendant, especially of contents, fixtures, stock of goods, and merchandise, etc., contained in store No. 33 Tchoupitoulas street, which seizure was effected on October 29th, 1883.

That subsequently, in due course of proceeding, a judgment was rendered in favor of mover against the defendant, maintaining the attachment, with privilege and right of preference, on the property attached.

That on the 5th day of December, 1883, said judgment having become final, a writ of *fi. fa.* was issued, and the sheriff of this court directed to again seize the property seized and held under the seizure made on the writ of attachment to satisfy said judgment, and

the said sheriff did again, under said writ of *fi. fa.*, seize said property.

42 That he has, ever since the execution of the said writ of attachment, held same under the seizure then made, and latterly under both it and the seizure made in execution of the writ of *fi. fa.*

Mover further suggests that the sheriff of this honorable court is about to further execute said writs of *fi. fa.* by the sale of the property seized, but is obstructed therein by various persons, deputy marshals of the circuit court of the United States in and for the twelfth circuit and eastern district of Louisiana, and by the marshal of said court, J. R. G. Pitkin, who claim and pretend to hold said property, and refuse said sheriff the full and free control, possession, and disposal thereof under his writs under and by virtue of a seizure or seizures made or pretended to have been made by

43 him or them, said marshal and deputy marshals, in the execution of said writs of attachment issued from said circuit court at the instance of the following-named parties, to wit:

Krebs & Speis, T. Altschul & Co., B. Dreyfus & Co., Maddux, Hobart & Co., William Adler, Corning & Co., C. Lazard, Elias Block & Sons, H. Weiller & Co., C. Anduran & Co., Lachman & Jacobi, A. Gunther & Co., Edmond Dubois, Fairbanks & Duenwig, Freiburg & Workum, Isaac Hays, D. M. Stadeker & Co., L. Bamberger & Co., John Osborn, Son & Co., Arpad, Haraszthy & Co., H. A. Batzer & Co., S. Jacobi & Co., Stege & Reuling, and Hoffheimer Bros.

And on further suggesting that at the time of the issuance of said alleged writs of attachment from the said circuit court, the

44 property upon which said marshal and deputies levied or attempted to levy and seize was already under the seizure made by the sheriff, as hereinbefore set forth, in the custody of said sheriff and the jurisdiction of this court, and no seizure thereof could be made in the manner attempted by the United States marshal; and further suggesting, even if such seizure could be made and was made, that same was subsequent, in point of time and execution, to the seizure effected by the sheriff of this honorable court, and that to this court, at first vested with jurisdiction over the property seized, appertains the duty and power to regulate the effect of said and all subsequent seizures, and distribute proceeds of the property when sold; further suggesting that the defendant has suspended

45 business, is actually insolvent, and the property seized is insufficient in value and amount to pay and satisfy all writs issued against said defendant and his property; that at the same time with the writs herein, and before any seizure by said marshal was made or attempted under said writs from said circuit court, seizures under attachments issued from this court were made in the suits of S. Gumbel & Co. *vs.* Jos. Dreyfus, No. 9663, and Simon & Loeb *vs.* Jos. Dreyfus, No. 9664, of the docket hereof, and said property seized is insufficient to satisfy these writs.

It is ordered that J. R. G. Pitkin, marshal of the circuit court of the United States for the 5th circuit and eastern district of Louisiana,

and Krebs & Speis, T. Altschul & Co., B. Dreyfus & Co.,
46 Maddux, Hobart & Co., William Adler, Corning & Co., C. Lazard, Elias Block & Son, H. Miller & Co., J. Anduran & Co., Lachman & Jacobi, A. Gunther & Co., Edmond Dubois, Fairbanks & Duenwig, Freiburg & Workum, Isaac Hayes, D. M. Stadeker & Co., L. Bamberger & Co., John Osborn, Son & Co., Arpad, Haraszthy & Co., H. A. Batjer & Co., S. Jacobi & Co., Stege & Reuling, and Hoffheimer Bros., said attaching creditors, do show cause on Friday, the 21st of December, 1883, at 11 o'clock a. m., why the property seized under the attachment issued in this cause, and the suits of S. Gumbel & Co. *vs.* Jos. Dreyfus, No. 9663, and Simon & Loeb *vs.* Jos. Dreyfus, No. 9664, civil district court, should not be sold (or a sufficient amount thereof to satisfy said writs), the rank of the attaching creditors determined, and the proceeds of sale distributed accordingly; and it is further ordered that S. Gumbel & Co., Simon & Loeb, A. Lehman & Co., Bassetti & Xiques, C. Cavaroc & Son, Julius Wile & Co., Lichenstein Bros. & Co., and E. H. Gato, attaching creditors in this court, be notified and made parties hereto.

Extracts from the minutes of Monday, December 17th, 1883.

_____, _____,

Deputy Clerk.

47 *Motion of Gumbel for Stay of Sale Refused and Intervention Fixed.*

Extract from the Minutes, November Term, 1883.

NEW ORLEANS, SATURDAY, *January 19th*, 1884.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

HOFFHEIMER BROS. *vs.* J. DREYFUS. } No. 10359.

Upon due consideration of the motion heretofore submitted to the court by C. Gumbel, intervenor herein, for a stay of the sale of the goods to take place on 21st instant, it is ordered that the said motion of the intervenor be, and the same is hereby, refused.

It is further ordered that the said intervention of C. Gumbel be fixed for hearing for Saturday, 26 instant, at 11 o'clock a. m., and that all parties be notified thereof.

48 *Supplemental Petition of Intervention and Third Opposition of C. Gumbel. Filed January 21st*, 1884.

HOFFHEIMER BROS. *vs.* JOSEPH DREYFUS. } No. 10359.

The amended and supplemental petition of opposition and intervention of C. Gumbel, filed with leave of this honorable court, with

respect, shows that there is error and inadvertence in the allegations of the original, in this, viz: That the sale of the property in controversy is about to be sold under a writ of *fi. fa.*, whereas the fact is, and it is now so alleged, that said sale is about to be made under certain interlocutory decrees or orders made in this cause, and in the suits of Kerls & Spies, No. 10355, and Maddux, Hobart & Co., No. 10356. In other respects the allegations of said
49 original bill are adheared to and reiterated, and in lieu of the order to show cause why the relief prayed should not be granted, he prays that the said J. R. G. Pitkin, the U. S. marshal, and all the parties named in said original petition, be cited to appear and answer said original and this supplemental petition and served with copy of same, and after due proceedings that judgments be rendered as prayed in said original petition; that the property seized or the proceeds thereof be delivered and ordered to be turned over to the civil sheriff of this parish, to be distributed amongst the attaching creditors in the civil district court, and he prays for all general and equitable relief, etc.

(Signed) BRAUGHN, BUCK & DINKELSPRIEL,
Attorneys.

Order.

50 Let this amended and supplemental petition of intervention be filed.

January 21st, 1884.

(Signed) EDWARD C. BILLINGS, *Judge.*

Service accepted for Arpad, Haraszthy & Co.

(Signed) H. HERDENHEIM,
Ex-Counsel.

Answer of Elias Block & Sons to Intervention & 3rd Opposition of C. Gumbel. Filed Feb'y 14th, 1884.

U. S. Circuit Court, 5th Circuit & East Dis. La.

HOFFHEIMER BROS
vs.
JOSEPH DREYFUS. } No. 10359.

Now come Elias Block & Sons, & for answer to the petition of intervention and third opposition of C. Gumbel, deny that he has any claim whatever on the property that has been attached in the several suits enumerated in his petition of intervention or the proceeds of said property.

51 Wherefore they pray that his intervention and third opposition be dismissed with costs.

(Signed) JOHN M. BONNER,
Att'y for Elias Block & Sons.

Answer of Ed. Dubois to Intervention of Gumbel. Filed Feb'y 14th, 1884.

U. S. Circuit Court, Fifth Eastern Dist. of La.

HOFFHEIMER BROS. *vs.* JOSEPH DREYFUS. } No. 10359.

Now comes Edmond Dubois, & for answer to the petition of intervention & third opposition of C. Gumbel, denies that he has any claim whatever on the property that has been attached in the several suits enumerated in his petition of intervention or the proceeds of said property.

Wherefore he prays that his intervention & third opposition be dismissed with cost.

(Signed) A. B. PHILIPS,
Att'y for Edmond Dubois.

52 *Answer of Fairbanks & Duening to Intervention of Gumbel.*

U. S. Circuit Court, Fifth Eastern Dist. of La.

HOFFHEIMER BROS. *vs.* JOSEPH DREYFUS. } No. 10359.

Now into court comes Fairbanks & Duening, and for answer to the petition of intervention & third opposition of C. Gumbel, deny that he has any claims whatever on the property that has been attached in the several suits enumerated in his petition of intervention or proceeds of said property.

Wherefore they pray that his intervention & third opposition be dismissed with cost.

(Signed) A. B. PHILIPS,
Att'y for Fairbanks & Duening.

Order Fixing Gumbel's Intervention.

Extract from the Minutes of February 18th, 1884.

53 HOFFHEIMER BROS. *vs.* JOSEPH DREYFUS. } No. 10359.

On motion of Braughn, Buck & Dinkelspiel, of counsel for C. Gumbel, intervenor, it is ordered that the petition of intervention herein filed by said Gumbel be filed for hearing for Wednesday, 12th March, 1884, at 11 a. m., and that all the defendants in said intervention he notified hereof.

Default on Intervention of C. Gumbel.

Extract from the Minutes of Monday, Feb'y 18, 1884.

HOFFHEIMER BROS.
vs.
JOSEPH DREYFUS. } No. 10359.

On motion of Braughn, Buck & Dinkelspiel, attorneys for C. Gumbel, intervenor herein, and on suggesting and showing to the court that Corning & Co., Frieberg & Workum, Hoffheimer Bros., Stege & Reading, Lochman & Jacobi, Anderson & Co., Batjer & Co.,
54 Smith & Co., and J. R. G. Pitkin, U. S. marshal, defendants in said intervention, have failed to answer, although duly cited—

It is ordered that judgment by default be entered against each of the above-named defendants.

Exception & Answer of C. Lazard to Intervention of Gumbel. Filed Feb'y 19th, 1884.

United States Circuit Court for the Eastern Dist. Louisiana.

HOFFHEIMER BROS.
vs.
JOS. DREYFUS. } No. 10359.

And now comes C. Lazard, and for exception to the petition & supplemental petition of C. Gumbel, says:

1st. That this hon. court is without jurisdiction *ratione materiæ*, as well as *ratione personæ*, of the matters & things alleged &
55 parties hereto, and even have it jurisdiction that defendant cannot be made a party to this suit in the manner and form herein attempted.

2. That the identical issues herein involved and relief prayed have been previously adjusted and denied by final & definitive judgment referred to in the case of Gumbel *vs.* Dreyfus, in the civil district court for the parish of Orleans, in the matter of the rule annexed hereto, and opponent cannot reiterate and renew in this hon. court the controversy therein disposed of; and exceptor pleads the said judgment as *res adjudicata* herein.

Should the said exceptions be overruled, & not otherwise, then defendant, answering, denies all & singular the allegations of the said petition of intervention & 3rd opposition, and specially denies
56 any rights or interest in the said intervenor or 3rd opponent in the property or proceeds of sale thereof herein referred to.

Wherefore exceptor prays that this exception be maintained, and intervenor & 3rd opponent's petition be dismissed with costs.

And for general relief.

(Signed) T. GILMORE & SONS,
Attys' for C. Lazard.

Exception & Answer of Wm. Adler to Intervention of Gumbel Filed Feb'y 19th, 1884.

United States Circuit Court.

HOFFHEIMER BROS.
vs.
JOSEHH DREYFUS. } No. 10359.

And now comes William Adler, and for exception to the petition & supplemental petition of C. Gumbel, says—

1st. That this hon. court is without jurisdiction *ratione materiæ* or *ratione personæ* of the matters & things alleged & parties hereto, and even have it jurisdiction of the matters involved or parties hereto, that defendant cannot be made a party to this cause in the manner and form herein attempted.

57

2. That the issues involved and relief sought have been previously adjudged and denied by final & definitive judgment in the case of Gumbel *vs.* Dreyfus, in the civil district court for the parish of Orleans, in the matter of the rule and judgment referred to herein, and exceptor pleads said judgment as *res judicata* herein.

Should the said exceptions be overruled & not otherwise, then defendant reserving the benefit thereof, and of all legal exceptions, for answer denies all & singular the allegations of said petition of intervention & third opposition herein, and specially denies that the said intervenor & 3rd opponent has any rights or interest in the property or proceeds of sale thereof herein referred to.

58

Wherefore he prays that this exception be maintained, & said intervenor & 3 opponents suit be dismissed with costs.

And for general relief.

(Signed) T. GILMORE & SONS,
Att'ys for Adler.

Answer of H. Weiller & Co., Friburg & Workum, S. Jacoby & Co., to Intervention of Gumbel. Filed Feb'y 25th, 1884.

C. C't U. S. 5 C't & Eastern District of La

HOFFHEIMER BROS
vs.
JOSEPH DREYFUS. } No. 10359.

Now come by their att'ys undersigned H. Weiller & Co., S. Jacobi & Co., Freiburg & Workum, cited by C. Gumbel, int'r, & for answer to the intervention, deny each & every allegation therein contained.

59

Respondents further answering, deny specially that intervenor has any valid judgment or claim against said Dreyfus which can affect or be used against these respondents; respondents further aver & charge that the pretended claim on which said judgment is based was simulated, unreal, collusive, & fraudulent, & that the judgment was

permitted & obtained through collusion, for the purpose of hindering, delaying, & embarrasing the just creditors of an insolvent debtor, and to screen his property & assets from its pursuit by respondents, and while there was an answer pending in court. That the asserted indebtedness did not exist, & is a mere sham & sumulation, & the suit was not seriously defended, but obtained
60 by the silence & inaction of def't in execution of some collusive agreement with said Gumbel, or with his agents, to defraud his creditors, & the same is now used unlawfully to defeat the just rights of resp'd'ts. Respondents further allege that said C. Gumbel is the son-in-law of said Dreyfus, &, from his relations, was well aware of his impending bankruptcy or insolvency, & that he combined, confederated, & colluded with him to take out the attachment on the 27th Oct., 1883, afterwards ripened into judgment, which was not levied in good faith, but kept back, collusively, from Saturday until Monday, the 29th Oct., 1883, to meet any emergency or action of the just creditors, should they attempt to attach
61 first; all which was done in pursuance of, & to carry out, the collusive & fraudulent scheme concocted between said Dreyfus & his son-in-law, Gumbel, to obtain the first seizure on their fictitious, fraudulent, & simulated claim, if possible.

Respondents deny specially, & call for strict proof, that Joseph Dreyfus owed Gumbel thirty-five thousand dollars, or any part thereof, at the date of the attachment or judgment arising out of the partnership with Dreyfus, dissolved in May, '81, as was alleged by Gumbel, & that Dreyfus pretended to have & did have a good & valid defense thereto, but purposely & collusively failed to assert it, or to prove it when he had the opportunity; that said Dreyfus
62 failed to obtain counsel & signed the intended resistance *in propria personæ* merely to pretend to defend, in order to carry out his part of the collusive & fraudulent understanding or agreement with the said Gumbel or his agents, and with no serious intention whatever to defeat the illegal claim set up by intervenors; but, on the contrary, to aid & assist him to perfect the scheme concocted by them. Respondents charge that all the acts and doings of said Gumbel & Dreyfus in relation to said claim & judgment were illegal, simulated, & fraudulent, & null and void as against these respondents, & that the judgment was irregular & premature on its face and absolutely null.

Wherefore resp'd'ts pray that, after due proceedings had, said intervention be dismissed with costs, & for all general & equitable relief.

(Signed) D. C. & L. L. LABATT,
Of Counsel.

63 *Second Supplemental Petition of Intervention & Third Opposition of C. Gumbel. Filed March 8th,* 1884.

HOFFHEIMER BROS.
vs.
JOS. DREYFUS. } No. 10359.

To the hon. the judges of the circuit court of the United States for the 5th circuit & eastern district of La.:

The further supplemental and amended petition of intervention and third opposition of C. Gumbel, filed with leave of this hon. court, adhering to and reaverring each and every allegation in his original and supplemental petition contained, now respectfully shows that if it be held in fact and in law that the marshal of this hon. court was or had *a*ffected a seizure which vests jurisdic-
64 tion as to it the distribution of the property or proceeds in this hon. court, and rendered impossible any actual seizure or physical control over the property by the civil sheriff of this parish, that then, and in that event, intervenor is entitled to have his attachment recognized by this honorable court, and is entitled to share according to his rank in the distribution of the proceeds of the property; that the distribution of such proceeds must be made, according to the laws of this State, to the seizing creditors, according to priority of time of seizure; that in addition to the efforts made and proceedings had in behalf of intervenor, the U. S. marshal was served with interrogatories as garnishee, and in every legal and practicable way or mode notified of the writ or writs held by the sheriff, and thereby a valid seizure was *a*ffected on
65 petitioner's behalf to take rank according to the time at which it was executed.

That at the time, as set forth in original petition of intervention, when the sheriff executed the writ no valid writs were in the possession of the marshal, for the reasons set forth in said original petition; and even if valid, said writs in the suits set forth in said original petition have all been abandoned, discontinued, or set aside by judgment of this hon. court; and petitioner in intervention are therefore entitled, as first in rank, in point of time, of valid seizure, to be paid in preference to all other attaching creditors.

Wherefore he prays that this second supplemental petition of intervention and third opposition be filed; that all parties be served therewith, and after due proceedings for judgment as in the original and first supplemental petition prayed; or if it should be held that the marshal's possession, under the circumstances, excluded any possession and control of said property by the sheriff
66 and the civil district court of this parish, and that this hon. court has jurisdiction over the *res*, then he prays that his attachment, obtained as set forth, be recognized; that he be permitted to participate in the distribution of the proceeds, and accordingly that [he] be paid out of the proceeds of sale in preference to all other attaching creditors subsequent in rank to his own, and for general relief, etc.

(Signed) BRAUGHN, BUCK & DINKELSPIEL,
Att'ys.

Order.

Let the within second supplemental and amended petition of intervention & third opposition be filed.

(Signed) EDWARD C. BILLINGS,
March 3rd, 1884. *Judge.*

Service accepted.
N. O., March 6th, '84.

(Signed) BAYNE & D. &
MILLER & FINNEY,
For Hoffheimer.

(Signed) T. J. SEMMES & PAYNE, &
ERNEST T. FLORANCE,
67 *For Kerbs & Spiess, Maddux, Hobart & Co.*

(Signed) ERNEST F. FLORANCE,
For T. Altschul & Co., B. Dreyfus & Co., L. Bamberger & Co., D. W. Sladeker & Co.

(Signed) MERRICK, FOSTER & MERRICK,
For Stege & Reiling.

(Signed) JOHN M. BONNER,
For Elias Block & Sons.

(Signed) JOSEPH P. HORNOR & T. W. BAKER,
For Sundry Creditors.

(Signed) D. C. & L. L. LABATT,
For Weiller & Co., S. Jacoby & Co., F. Freiberg & Workum.

(Signed) H. HEIDENHEIN,
For Arpad, Heraszthy & Co.

(Signed) T. GILMORE & SONS,
For Lazard & Wm. Adler.

Answer to 2nd Supplemental Intervention for Jacoby & Co., H. Weiller, & Freiberg & Workum. Filed March 8th, 1884.

68 U. S. Circuit Court, 5th Circuit & Eastern D't of La.

HOFFHEIMER BROS.
vs.
JOSEPH DREYFUS. } No. 10359.

On Rule Gumbel.

Now come, by their att'ys, H. Weiller & Co., S. Jacoby & Co., & Freiburg & Workum, made def'ts herein, & for answer to the supplemental & amended petition of intervention plead a general denial. And further answering, resp'd'ts allege that neither pl't'ffs or intervenors were prior in seizing to them in law or in fact, & that the race of diligence in obtaining or executing the writs from the court at unusual hours of the night when the cl'k's & marshal's offices are closed is not the test of priority, & that such diligence only commences when all litigants can approach the court & its officers during the usual business hours of the day; & resp'd'ts aver they
69 were as prompt & vigilant as either of the parties hereto, & are entitled to the same rights or concurrent rank under the

laws of Louisiana over said proceeds. Wherefore they pray that intervenors' petitions & prayer be rejected, & that pl'ff's' preference be disallowed over the proceeds, & the same distributed according to law, justice, & equality, & for costs & further general relief.

(Signed) D. C. & L. L. LEBATT,
Counsel for Resp'd'ts.

Exceptions & Answer to Supplemental Petition of C. Gumbel. Filed March 11th, 1884.

U. S. Circuit Court.

HOFFHEIMER BROS. vs. JOSEPH DREYFUS. } No. 10359.

Now come Hoffheimer Bros., defendants, on the intervention of C. Gumbel and against the supplemental petition. They urge and insist upon the exception heretofore pleaded to his demand.

70 Should these exceptions be overruled, for answer to said supplemental petition they deny all and singular the allegations therein contained tending to show any right in said Gumbel to the relief he asks.

They aver the validity of their attachment, the validity of the seizure; that the marshal seized and took possession of the property of said Dreyfus under said writ of attachment; had at all times under said attachment actual and exclusive possession of said property; that the sheriff could not, and never did, seize said property. The respondents reiterate all the allegations in their original answer, and deny that said Gumbel ever acquired any right whatever upon the property of said Dreyfus or to its proceeds in

71 the hands of the marshal, but aver that said property and proceeds are held exclusively under the attachment and writs of the court for the benefit of these respondents.

They pray for judgment in their favor and for general relief.

(Signed) BAYNE & DENEGRE.
" W. D. DENEGRE.
" MILLER & FINNY,
For Hoffheimer Bros.

Exception & Answer of Plaintiffs to Supplemental Petition of C. Gumbel. Filed March 11th, 1884.

U. S. Circuit Court.

HOFFHEMIER BROS. vs. JOSEPH DREYFUS. } No. 10359.

Now come Hoffhemier Bros., one of the defendants herein, and except to the petition of the plaintiffs, for this, to wit, that the proceeds of sale which plaintiffs claims have been realized under

72 the writs of attachment, execution, and orders of this court; that the plaintiff cannot contest the validity of said attach-

ment, execution, and orders, and at the same time claim the proceeds made under such process, executions, and orders of sales, nor can plaintiff in the mode he has adopted assail the rights acquired by these plaintiffs under their attachment, judgment, and orders of this court in the premises.

Should this exception be overruled this defendant, for answer to plaintiffs' petition, denies all and singular the allegations therein contained, except in so far as is hereinafter specially admitted. They aver that under the writ of attachment issued by this court
73 upon the petition of these defendants, the marshal seized and took into his possession the property of Joseph Dreyfus, continuously and at all times held and maintained such possessions and seizure until the sale of said property under the order of this court, and as to that property not sold, if any, he still continues to hold it under such attachment and orders of this court, based on his said seizure, and made to carry said attachment and judgment of this court into effect for the benefit of these defendants as attaching creditors.

This defendant denies that the sheriff of the parish, under plaintiff's attachment or execution, or under any attachment, execution, or order, ever made any seizure, or had or took possession of any property of said Dreyfus or of any part thereof, but the
74 marshal solely and exclusively had at all times actual possession of said property under said seizure made by him, now holds the proceeds of sale of said property, or of so much thereof as has been sold, for these defendants as attachment and execution creditors, under whose writs said proceeds have been realized; defendants further deny that plaintiffs have any judgment against said Dreyfus.

Defendants pray for judgment in their favor, maintaining their rights to said proceeds, and all rights growing out of their attachment, execution, and orders of this court, to carry the said attachment & execution into effect; that said petition be dismissed, and for general relief.

(Signed) BAYNE & DENEGRE,
" W. D. DENEGRE,
" MILLER & FINNEY,
For Defendants, Hoffheimer Bros.

75 *Exception & Answer of Kerbs & Spiess. Filed March 12th*, 1884.

U. S. Circuit Court East'n Dist. of La.

HOFFHEIMER BROS. *vs.* JOS. DREYFUS. } No. 10359.

Now into court come Kerbs & Spiess, sought to be made parties defendant to the petition and supplemental petitions of opposition and intervention of C. Gumbel, and by way of exception plead that this court is without jurisdiction *ratione personæ* to entertain said petition and supplemental petitions, for this, that petition- therein

is not a citizen of a State different from that whereof defendant Dreyfus is a citizen.

And for further exception they plead that intervenor presents no cause of action in his petition and supplemental petitions, and in event said exceptions are overruled, then they plead the gen-
76 eral issue, and pray to be hence dismissed with their costs.

(Signed) T. J. SEMMES & PAYNE &
ERNEST T. FLORANCE,
Counsel.

N. O., M'ch 7th, 1884.

We join in above exceptions and answer.

MADDIX, HOBART & CO.
(Signed) T. J. SEMMES & PAYNE,
(Signed) ERNEST T. FLORANCE,
Att'ys.

(Signed) T. ALTSCHUL & CO.
B. DREYFUS & CO.
L. BAMBERGER & CO.
D. W. STADEKER & CO.
(Signed) WALTER D. DENEGRE.
RAYNE & DENEGRE.
MILLER & FINNY,
For Hoffheimer Bros.
(Signed) ERNEST T. FLORANCE, *Att'y.*

Continuance of Intervention of Gumbel.

Extract from the Minutes of Wednesday, March 12, 1884.

HOFFHEIMER BROS. *vs.* JOSEPH DREYFUS. } No. 10359.

KERBS & SPIES *vs.* JOSEPH DREYFUS. } No. 10355.

MADDIX, HOBART & Co. *vs.* JOSEPH DREYFUS. } No. 10356.

The above causes came on this day to be heard in the matter
77 of the distribution of the fund therein, and on the intervention and 3rd opposition of C. Gambel.

Present: Bayne & Denegre, Miller & Finney, Walter D. Denegre, Thom's J. Semmes & Payne, T. Gilmore & Sons, D. C. & L. L. Lebatt, J. M. Bonner, Alfred Grima, and A. B. Phillips for creditors.

Braughn, Buck & Dinkelspiel for C. Gumbel, intervenor and 3rd opponent.

Whereupon, upon suggestion to the court that some of the counsel for the creditors are engaged in the supreme court on the trial of cases opened and upon in that behalf, it was ordered that the mat-

ter of the distribution of fund as well as the said intervention be adjourned to Wednesday, the 19th instant, at 11 o'clock a. m.

And thereupon, upon motion of Braughn, Buck & Dinkelspiel, it was ordered that the name of Morris Marks be placed as attorney of record for said C. Gumbel, intervenor.

78 *Answer of Ed. Dubois to Intervention of Gumbel. Filed March 17th, 1884.*

U. S. Circuit Court.

HOFFHEIMER BROS. vs. JOSEPH DREYFUS. } No. 10359.

Now comes Edward Dubois, defendant on the intervention of C. Gumbel, and against the supplemental petition they urge and insist upon the exception heretofore pleaded to his demand.

Should the exception be overruled, for answer to said supplemental petition he denies all & singular the allegations therein contained tending to show any right in said Gumbel to the relief he asks.

They aver the validity of their attachment, the validity of the seizure; that the marshal seized and took possession of the
79 property of said Dreyfus under said writ of attachment; had at all times under said attachment actual and exclusive possession of said property; that the sheriff could not and never did seize said property. The respondents reiterate all the allegations in their original answer, and deny that said Gumbel ever acquired any right whatever upon the property of said Dreyfus or to its proceeds in the hands of the marshal, but aver that said property and proceeds are held exclusively under the attachment and writs of the court for the benefit of this respondent.

He prays for judgment in his favor, & for general relief, &c.

(Signed) A. B. PHILIPS,
Att'y for Ed. Dubois.

Answer of Fairbanks & Duening to Intervention of Gumbel. Filed March 17th, 1884.

80 U. S. Circuit Court.

HOFFHEIMER BROS. vs. JOSEPH DREYFUS. } No. 10359.

Now comes Fairbanks & Duening, defendants on the intervention of C. Gumbel, and against the supplemental petition they urge and insist upon the exception heretofore pleaded to his demand. Should these exceptions be overruled, for answer to said supplemental petition they deny all and singular the allegations therein contained tending to show any right in said Gumbel to relief he asks.

They aver the validity of their attachment, the validity of the seizure; that the marshal seized and took possession of the property

of said Dreyfus under said writ of attachment; had at all times under said attachment actual and exclusive possession of
81 said property; that the sheriff could not and never did seize said property. The respondents reiterate all the allegations in their original answer, and deny that said Gumble ever acquired any rights whatever upon the property of said Dreyfus, or to its proceeds, in the hands of the marshal, but aver that said property and proceeds are held exclusively under the attachment and writs of the court for the benefit of these respondents.

They pray for judgment in their favor, & for general relief, &c.

(Signed) A. B. PHILIPS,
Att'y for Fairbanks & Duening.

Exception and Answer of Stege & Reiling. Filed March 19th, 1884.

United States Circuit Court for Eastern District of Louisiana.

82 HOFFHEIMER BROS. *vs.* JOSEPH DREYFUS. } 10359.

Now into court comes Stege & Reiling, sought to be made defendants to the petitition & supplemental petition of opposition and intervention, — C. Gumbel, and, by way of exception, pleads that this court is without jurisdiction *ratione personæ* to entertain said petition and supplemental petition, for that petitioner therein is not a citizen or resident of a State different from that whereof defendant Dreyfus is a citizen. And for further exception they plead that intervenor presents no cause of action in his petition and supplemental petition, & in the event said exceptions are overruled they
83 plead the general issue, and pray to be hence dismissed with their costs.

(Signed) MERRICK, FOSTER & MERRICK, *Att'ys.*

Hearing & Continuance of Intervention of C. Gumbel.

Extract from the Minutes of Wednesday, March 19, 1884.

HOFFHEIMER BROS. *vs.* JOSEPH DREYFUS. } No. 10359.

KERBS & SPIES *vs.* JOSEPH DREYFUS. } No. 10355.

MADDUX, HOBART & Co. *vs.* JOSEPH DREYFUS. } No. 10356.

The above causes came on to be heard on the motion for a distribution of the fund therein, and on the intervention and 3rd opposition of C. Gumbel.

Present: Bayne & Denegre, Miller & Finney, W. D. Denegre,

Thos. J. Semmes & Payne, E. T. Florance, Joseph P. Hornor, F. W. Baker, D. C. & L. L. Lebatt, J. M. Bonner, C. S. Rice, T. Gilmore & Sons, Leovy & Kruttschnitt, Alfred Grima, A. B. Phillips, for the plaintiffs and intervenors in the various suits against J. Dreyfus.

84 Braughn, Buck & Dinkelspiel, A. H. Leonard, and Morris Marks, for C. Gumbel, intervenor and 3rd opponent.

When it was then and there, in open court, *argued* by and between the said counsel for the said parties to waive the intervention of a jury, and to try the whole matter before the court.

Whereupon the interventions of C. Cavaroc & Sons and Basseti & Xiques, filed in above-entitled suits, and case of E. Dubois *vs.* J. Dreyfus, No. 10367, of this docket, came on to be heard, and were submitted upon the evidence adduced in open court, and the court took time to consider.

As to the demands of S. Jacoby & Co., C. Anduran & Co., H. A. Batjer & Co., Lachman & Jacobi, and A. Gunther & Co., claiming vendors' lien and privilege, the court directed that they be heard at a future day.

And thereupon the matter of the distribution of the fund and the said intervention and 3rd opposition of C. Gumbel were taken up, and, having been partially heard, the same were continued for further hearing until to-morrow at 11 o'clock a. m.

85 *Exception and Answer to Supplemental Petition of C. Gumbel of March 3rd*, 1884. *Filed 20th March*, 1884.

WM. ADLER
v.
JOSEPH DREYFUS. } No. 10359.

And now comes the plaintiff, and reserving the benefit of the exceptions hereinbefore filed, to the petition of intervention and third opposition of C. Gumbel, and reiterating the same, for answer denies all and singular the allegations of said Gumbel's latest supplemental petition, and specially denies that the sheriff made any actual or legal seizure as therein alleged, or that said Gumbel has any right to the relief prayed for by him.

Wherefore plaintiff prays that said supplemental petition of C. Gumbel be dismissed, with costs, and for general relief.

(Signed) T. GILMORE & SONS,
Attorneys.

Hearing and Submission.

86 Extract from the Minutes, November Term, 1883.

NEW ORLEANS, THURSDAY, *March* 20, 1884.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

HOFFHEIMER BROS.
v.
JOSEPH DREYFUS. } 10359.

* * * * * * * *

The above causes, as continued from yesterday, came on this day to be heard further, and the said counsel for the respective parties being all present the trial was proceeded with, and were heard and argued by the counsel for the parties respectively and submitted; when the court took time to consider.

Bill of Exceptions. Filed 24 *March*, 1884.

United States Circuit Court.

HOFFHEIMER BROS.
v.
DREYFUS. } 10359.

Hon. Judge Billings, presiding.

On rule of S. Gumbel to distribute funds.

87 Be it remembered that on the trial of this rule, on March 20th, 1884, that the counsel for S. Gumbel offered in evidence a certain transcript (hereto annexed and to be considered herewith) from the civil district court for the parish of Orleans, in a suit entitled S. Gumbel *v.* Jos. Dreyfus, and numbered — of its docket, to the introduction and admissibility of which all the counsel for defendants in rule, and especially counsel for K. Weiller & Co., one of the defendants, and for I. Jacoby & Co., and Freiberg & Workum, promptly objected on the following grounds:

1st. That the transcript was incomplete, and did not purport to be, by its certificate, a full transcript of all the proceedings, pleadings, and other documents filed in the cause, and only purported to be a special part of said record by the attestation and certificates affixed thereto.

2d. That on its face the judgment was an absolute nullity, and the court was without jurisdiction to render it; because it
88 purported to be a judgment upon a default, while an answer or appearance was pending before the court, filed within the legal delays to prevent confirmation, coupled with a rule to shew cause why the attachment should not be dissolved, which evidence is patent in the transcript tendered.

3d. That plaintiffs in rule have no judgment whatever, and the transcript shows that the judgment obtained was premature, and, consequently, absolutely null and void, but the court overruled the objections as to its admissibiiity, reserving the objections as going to the effect of the judgment, to which ruling defendants reserved a bill, and now tender the same for signature of the judge presiding and sealing the same, which is allowed and done.

(Signed) EDWARD C. BILLINGS,
Judge.

Transcript from the civil district court for the parish of Or-
89 leans, in the suit entitled C. Gumbel *v.* Jos. Dreyfus, and numbered 9662 of its docket, annexed to foregoing bill of exceptions:

Petition. Filed October 27th, 1883.

Civil District Court for the Parish of Orleans.

C. GUMBEL
v.
JOSEPH DREYFUS. } No. 9662. Division "B," C'l D't C't.

STATE OF LOUISIANA:

To the honorable the civil dist. court for the parish of Orleans:

The petition of Cornelius Gumbel, a resident of this city, with respect represents that Joseph Dreyfus, also of this city, is justly and truly indebted unto petitioner in the full sum of twenty-three thousand one hundred and eighty-four $\frac{37}{100}$ dollars, being balance of account, a statement of which is hereto annexed as part hereof.

Petitioner further represents that said indebtedness arose on May 1, '81, when petitioner sold to said Dreyfus his interest in the part-
nership firm of Joseph Dreyfus and Co., composed of peti-
90 tioner and said Dreyfus, for $35,637.50, to which is to be added items of profit and interest as set forth on said account; that petitioner has been paid on account of his claim various amounts as shown on said statement, leaving the balance as aforesaid still due and unpaid, notwithstanding amicable demand.

Now petitioner further represents that said Dreyfus has mortgaged, assigned, or disposed of, or is about to mortgage, assign, or dispose of, his property, rights or credits, or some part thereof, with intent to defraud his creditors or give an unfair preference to some of them; and that he has converted, or is about to convert, his property into money or evidences of debt with intent to place it beyond the reach of his creditors, and that a writ of attachment is necessary to protect the right of petitioner in the premises.

Wherefore he prays, the premises and the annexed bond and affidavit considered, that a writ of attachment do herein issue,
91 directing the sheriff to seize and take into his possession all the property of said Dreyfus, wherever found, and to hold same subject to the further orders of this honorable court, and that said Dreyfus may be cited to appear and answer this petition, and that in due course of law there be judgment against him and in favor of petitioner for the said full sum of $23,184.37, with legal interest from October 24, '83, till paid, and with lien and privilege on the property to be herein attached, and that petitioners' claim be paid therefrom by preference over and above all other creditors; and for costs and general relief.

(Signed) BRAUGHN, BUCK & DINKELSPIEL,
Att'ys.

Affidavit.

C. Gumbel, being duly sworn, deposes and says, that all and singular the allegations of the foregoing petition are true and correct.

(Signed) C. GUMBEL.

Sworn to before me this Oct. 27th, 1883.

(Signed) W. O. HART, *Not. Pub.* [SEAL.]

92 *Bond. Filed October 27th*, 1883.

Bond for writs of attachment and sequestration.

Know all men by these presents, that we, C. Gumbel, as principal, and F. Gumbel, as surety, of the city of New Orleans, and State of Louisiana, are held and firmly bound unto James T. Clark, clerk of the civil district court for the parish of Orleans, and his successors in said office, in the sum of twenty-five thousand dollars lawful money of the United States of America, for which payment, well and truly to be made to the said clerk or his successors, we bind ourselves *in solido*, and each of our executors, administrators, heirs, and assigns, firmly by these presents.

Sealed with our seals, and dated the 27th day of October, 1883.

Whereas the said C. Gumbel has this day presented a petition to the civil district court for the parish of Orleans, praying a writ of attachment to issue against property of said Dreyfus:

Now, the condition of the above obligation is, that we, the
93 above bound principal and surety, will well and truly pay to the said clerk, or his successors in office, for the benefit of any and all persons interested in said suit, all such damages as may be recovered against us, in case it should be decided that the said writ was wrongfully obtained.

(Signed) C. GUMBEL. [SEAL.]
" F. GUMBEL. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) W. O. HART.

Statement Annexed to Petition. Filed October 27th, 1883.

C. Gumbel, Esq., in Ac. with Joseph Dreyfus.

Dr.					Cr.			
1882.					1881.			
Aug. 31.	To B. P.			10,000 00	May 1.	By balance		35,637 50
1883.					1882.			
Ap'l 30.	" Gumbel & Meyer			5,704 58	May 31.	" profit		3,870 45
"	" do.	mdse. ac.		2,240 96	1883.			
Oct. 24.	" do.			216 67	Oct. 1.	" interest		3,027 33
"	" do.	mdse. ac.		1,188 70				
"	" balance			23,184 37				
				42,535 28				42,535 28
					1883.			
					Oct. 24.	By balance		23,184 37

Transcript from the civil district court for the parish of Or-
89 leans, in the suit entitled C. Gumbel *v.* Jos. Dreyfus, and numbered 9662 of its docket, annexed to foregoing bill of exceptions:

Petition. Filed October 27th, 1883.

Civil District Court for the Parish of Orleans.

C. GUMBEL
v.
JOSEPH DREYFUS. } No. 9662. Division "B," C'l D't C't.

STATE OF LOUISIANA:

To the honorable the civil dist. court for the parish of Orleans:

The petition of Cornelius Gumbel, a resident of this city, with respect represents that Joseph Dreyfus, also of this city, is justly and truly indebted unto petitioner in the full sum of twenty-three thousand one hundred and eighty-four $\frac{37}{100}$ dollars, being balance of account, a statement of which is hereto annexed as part hereof.

Petitioner further represents that said indebtedness arose on May 1, '81, when petitioner sold to said Dreyfus his interest in the part-
nership firm of Joseph Dreyfus and Co., composed of peti-
90 tioner and said Dreyfus, for $35,637.50, to which is to be added items of profit and interest as set forth on said account; that petitioner has been paid on account of his claim various amounts as shown on said statement, leaving the balance as aforesaid still due and unpaid, notwithstanding amicable demand.

Now petitioner further represents that said Dreyfus has mortgaged, assigned, or disposed of, or is about to mortgage, assign, or dispose of, his property, rights or credits, or some part thereof, with intent to defraud his creditors or give an unfair preference to some of them; and that he has converted, or is about to convert, his property into money or evidences of debt with intent to place it beyond the reach of his creditors, and that a writ of attachment is necessary to protect the right of petitioner in the premises.

Wherefore he prays, the premises and the annexed bond and affidavit considered, that a writ of attachment do herein issue,
91 directing the sheriff to seize and take into his possession all the property of said Dreyfus, wherever found, and to hold same subject to the further orders of this honorable court, and that said Dreyfus may be cited to appear and answer this petition, and that in due course of law there be judgment against him and in favor of petitioner for the said full sum of $23,184.37, with legal interest from October 24, '83, till paid, and with lien and privilege on the property to be herein attached, and that petitioners' claim be paid therefrom by preference over and above all other creditors; and for costs and general relief.

(Signed) BRAUGHN, BUCK & DINKELSPIEL,
Att'ys.

Affidavit.

C. Gumbel, being duly sworn, deposes and says, that all and singular the allegations of the foregoing petition are true and correct.
(Signed) C. GUMBEL.

Sworn to before me this Oct. 27th, 1883.
(Signed) W. O. HART, *Not. Pub.* [SEAL.]

92 *Bond. Filed October 27th*, 1883.

Bond for writs of attachment and sequestration.

Know all men by these presents, that we, C. Gumbel, as principal, and F. Gumbel, as surety, of the city of New Orleans, and State of Louisiana, are held and firmly bound unto James T. Clark, clerk of the civil district court for the parish of Orleans, and his successors in said office, in the sum of twenty-five thousand dollars lawful money of the United States of America, for which payment, well and truly to be made to the said clerk or his successors, we bind ourselves *in solido*, and each of our executors, administrators, heirs, and assigns, firmly by these presents.

Sealed with our seals, and dated the 27th day of October, 1883.

Whereas the said C. Gumbel has this day presented a petition to the civil district court for the parish of Orleans, praying a writ of attachment to issue against property of said Dreyfus:

Now, the condition of the above obligation is, that we, the
93 above bound principal and surety, will well and truly pay to the said clerk, or his successors in office, for the benefit of any and all persons interested in said suit, all such damages as may be recovered against us, in case it should be decided that the said writ was wrongfully obtained.

(Signed) C. GUMBEL. [SEAL.]
" F. GUMBEL. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) W. O. HART.

Statement Annexed to Petition. Filed October 27th, 1883.

DR. *C. Gumbel, Esq., in Ac. with Joseph Dreyfus.* CR.

1882.				1881.			
Aug. 31.	To B. P.		10,000 00	May 1.	By balance		35,637 50
1883.				1882.			
Ap'l 30.	" Gumbel & Meyer		5,704 58	May 31.	" profit		3,870 45
"	" do.	mdse. ac.	2,240 96	1883.			
Oct. 24.	" do.		216 67	Oct. 1.	" interest		3,027 33
"	" do.	mdse. ac.	1,188 70				
"	" balance		23,184 37				
			42,535 28				42,535 28
				1883.			
				Oct. 24.	By balance		23,184 37

Order.

Let a writ of attachment issue herein, as prayed for, on petitioner furnishing bond in the sum required by law.

N. O., Oct. 27, '83.

(Signed) F. A. MOORE, *Judge.*

94 *Writ of Attachment. Issued 27th October*, 1883.

State of Louisiana, Civil District Court for the Parish of Orleans.

C. GUMBEL
v.
JOS. DREYFUS. } No. 9962.

The State of Louisiana to the sheriff of the parish of Orleans, Greeting:

Whereas due proof has been made before the civil district court for the parish of Orleans by Cornelius Gumbel, that Joseph Dreyfus is justly indebted to him in the sum of twenty-three thousand one hundred and eighty-four $\frac{37}{000}$ dollars, with legal interest from October 24th, 1883, and that the said Joseph Dreyfus has mortgaged, assigned, or disposed of, or is about to mortgage, assign, or dispose of, his property, rights, or credits, or some part thereof, with intent to defraud, etc.: Now, therefore, you are commanded, in the State of Louisiana, and of the civil district court for the parish of Orleans, to seize and attach, according to law, and to take into your possession the goods, and chattles, lands and tenements,
95 rights and moneys, effects and credits of the said Joseph Dreyfus, if any you find in said parish, to the amount of what will suffice to discharge to said debt and costs of suit, and that you give notice of this proceeding by leaving a copy thereof at the last place of abode of the said defendant if in said parish, and causing a copy thereof to be affixed at the door of the parish church of said parish, and make return of this writ, and endorse thereon the manner in which you have executed it, before our court, according to law.

Clerk's office, 27th day of October, 1883.

(Signed) JAS. D. RANKIN,
Deputy Clerk.

Citation. Issued October 27th, 1883.

Civil District Court for the Parish of Orleans, in the City of New Orleans.

C. GUMBLE
v.
JOSEPH DREYFUS. } No. 9662. Cl. Dt. Ct.

STATE OF LOUISIANA:

To Mr. JOSEPH DREYFUS, *New Orleans:*

You are hereby summoned to comply with the demand contained

in the petition of which a copy accompanies this citation, or
96 deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans within ten days after the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 27th day of October, in the year of our Lord 1883.

(Signed) JAMES. D. RANKIN,
Deputy Clerk.

Sheriff's Return to Citation.

Received October 30th, 1883, and on the 30th day of October, 1883, I served a copy of the within citation and accompanying petition personally on Joseph Dreyfus, defendant herein.

Ret. same day.

(Signed) JNO. E. SICKFORT,
D'y Sheriff.

Supplemental Petition and Interrogatories. Filed October 29th, 1883.

C. GUMBLE
v. } No. 9662.
JOS. DREYFUS.

To the honorable the district court for the parish of Orleans:

The supplemental petition of C. Gumble respectfully represents:

That he has obtained from the clerk of this honorable court a writ of attachment, ordering the sheriff of this parish to
97 seize and take into his possession the property, real and personal, rights, and credits of defendant, Jos. Dreyfus, and to cause to be made in the manner prescribed by law an amount sufficient to pay and satisfy the same, viz., twenty-three thousand one hundred and eighty-four $\frac{37}{100}$ dollars, and having good reason to believe that J. R. G. Pitkin, marshal of the United States district and circuit court for the eastern district of Louisiana and fifth circuit, third person, is indebted unto said defendant or has property or effects in his possession or under his control belonging to said defendant:

Therefore petitioner prays that said J. R. G. Pitkin, marshal, &c., be made garnishee herein, and ordered to answer under oath to accompanying interrogatories, and after all due and legal proceedings condemned to pay the amount of said claim and costs.

(Signed) BRAUGHN, BUCK & DINKELSPIEL,
Attorneys for Petitioner.

Interrogatories.

To be answered categorically under oath, in writing, ten days from service.

1st. Had you in your hands or under your control, directly
98 or indirectly, at the time of the service of these interrogatories, or at any time since, any money, rights, credits, or

other property whatsoever belonging or due to the said defendant in attachment or in which he has or had any interest for the whole or for a part; and, if yea, what is the nature, description, and amount thereof, and is the same sufficient to pay or satisfy the full amount of said claim, or, if less, to what amount? You being asked and required to make a full disclosure in relation to the same.

2nd Interrogatory. Were you not at the time of service upon you of these interrogatories, or since, directly or indirectly, indebted or obligated unto the said defendant in attachment for anything or for any sum whatever, whether for yourself alone or together with others, in consequence of any sale or exchange or transaction of any kind whatever, whether the same be due or to become due, and whether the interests of said defendant in attachment be direct or indirect, or be for the whole or a part only, or whether it be
99 by bill, note, or otherwise; and, if yea, what is the nature, description, and amount thereof, and is the same sufficient to pay or satisfy the full amount of said claim and costs, or, if less, what amount? You being asked and required to make a full and detail- disclosure in relation tothe same.

3rd interrogatory. Have you, at any time since the service of notice of seizure in your hands herein, made, directly or indirectly, unto or with the said defendant in attachment, any payment or novation, or compromise or arrangement, or given him any note or written obligation, or received from him, directly or indirectly, any receipt or acquittance; and, if yea, state the nature, description, and amount thereof, and the time, place, and circumstances of the same.

(Signed) BRAUGHN, BUCK & DINKELSPIEL,
Att'ys.

Citation to Garnishee. Issued 29th October, 1883.

C. GUMBLE
v.
JOS. DREYFUS. } No. 9662.

STATE OF LOUISIANA:

100 Civil District Court for the Parish of Orleans, in the city of New Orleans.

To J. R. G. Pitkin, marshal of the U. S. district and circuit courts for the eastern district of Louisiana, and fifth circuit, garnishee, New Orleans:

You are hereby cited to declare, on oath, what property belonging to the defendant in this case you have in your possession, or in what sum you are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to the supplemental petition, of which a copy accompanies this citation, and deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans, within ten days from the service hereof; otherwise judgment will be entered against youfor the amount claimed by the plaintiff, with interest and costs.

Witness the Honorable F. A. Monroe, judge of the said court, the 29th day of October, in the year of our Lord 1883.

(Signed) JAMES D. RANKIN,
Deputy Clerk.

101 *Sheriff's Return to Citation on Garnishee. Filed Oct. 30th,* 1883.

Received October 29th, 1883, and on the same day, month, and year, at 25 minutes past 12 a. m., served copy of the within citation and accompanying original and supplemental petition and interrogatories on J. R. G. Pitkin, marshal of the U. S. district and circuit court for the eastern district of Louisiana, and the 5th circuit. Made garnishee herein in person. Ret. same day.

(Signed) WM. J. GRADY,
D'y Sheriff.

Sheriff's Return to Writ of Attachment.

Received Oct. 27th, 1883, and on the 29th day of October, 1883, proceeded to execute this writ against the movable property of def't described more fully in my notice of seizure when I found the said property in possession of the U. S. marshal, and by instructions of pl't,ffs' att'y placed my keepers on the sidewalk in front of said property, and kept them continually, both night and day, until
102 January 25th, '84, when they were withdrawn by order of pl't'ffs' att'y; also made general seizure by garnishment in the hands of J. R. G. Pitkin, marshal of the U. S. dist. court; from said general seizure nothing has as yet come into my possession or under my control, and this return is made up to date for the purpose of enabling the clerk of this court to complete a transcript of appeal.

(S'g'd) WM. J. GRADY,
D'y Sheriff.

Notice of Seizure, Annexed to Sheriff's Return to Writ.

STATE OF LOUISIANA:

In the Civil District Court for the Parish of Orleans.

C. GUMBEL
vs.
JOS. DREYFUS. } No. 9662.

CIVIL SHERIFF'S OFFICE, PARISH OF ORLEANS,
NEW ORLEANS, *October 27th,* 1883.

TO JOSEPH DREYFUS, *New Orleans:*

Please to take notice that by virtue of a writ of attachment issued in the above-mentioned suit, I have seized and taken in my possession all and singular the contents of the store number 33 Tchoupitoulas street.

(Signed) WM. J. GRADY,
D'y Sheriff.

103 *Sheriff's Return to Notice of Seizure.*

And on October 29th, 1883, at 1 a. m., served copy of the within notice of seizure on Joseph Dreyfus, defendant herein, in person.

(Signed) WM. J. GRADY,
D'y Sheriff.

Notice of Seizure on Garnishee, Annexed to Sh'ff's Return to Writ.

STATE OF LOUISIANA:

In the Civil District Court for the Parish of Orleans.

C. GUMBEL
v.
Jos. DREYFUS. } No. 9662.

CIVIL SHERIFF'S OFFICE, PARISH OF ORLEANS
NEW ORLEANS, *Oct. 29th*, 1883.

To J. R. G. Pitkin, marshal of the U. S. circuit court for the fifth circuit and eastern district of Louisiana, N. O. garnishee:

Please to take notice that, by virtue of a writ of attachment issued in the above-mentioned suit, I seize in your hands all the goods, chattels, lands, tenements, rights and credits, moneys, effects, bills of exchange, promissory notes, or property of any kind which you may now or hereafter have in your possession or under your control belonging to the defendant, Joseph Dreyfus, which you will hand over to me.

104 (Signed) WM. J. GRADY,
Deputy Sheriff.

Sheriff's Return to Foregoing Notice, &c.

And on October 29th, 1883, at 25 minutes past twelve a. m., served a copy of the within notice of seizure on J. R. G. Pitkin, marshal of the circuit court of the eastern district of Louisiana and the district court, 5th circuit, in person.

(Signed) WM. J. GRADY, *D'y Sh'ff.*

Exception of Pitkin, Marshal, etc. Filed November 7th, 1883.

Civil Dist. Court, etc.

C. GUMBEL
v.
Jos. DREYFUS. } No. 9662.

And now comes J. R. G. Pitkin, marshal of the United States, &c., cited herein as garnishee, and for exception says: That in his said capacity this honorable court is without jurisdiction to make him garnishee herein.

Wherefore he prays that he be dispensed from answering the interrogatories served on him in his said capacity; that this exception

be maintained and said garnishment proceedings dismissed,
105 with his reasonable allowance for fees of attorney necessarily employed herein, and for other costs. He prays also for all general relief.

(Signed) CHAS. S. RICE,
Of Counsel.

Order.

Let the exceptor be excused from answering the interrogatories accompanying garnishment proceedings herein, pending foregoing exception.

New Orleans, La., November 7th, 1883.

(Signed) W. T. HOUSTON, *Judge.*

Default. Extract from the Minutes of Division "B."

Division "B," Civil Dist. Court.

NOVEMBER 12TH, 1883.

C. GUMBEL
v.
JOSEPH DREYFUS. } No. 9662.

On motion of Braughn, Buck & Dinkelspeil, of counsel for plaintiff, and on showing to the court that, though duly cited herein, the defendant has failed to answer—

It is ordered by the court that judgment by default be entered against said defendant.

Motion to Dissolve. Filed Nov'r 13th, 1883.

Division "B," Civil Dist. Court.

C. GUMBEL
v.
Jos. DREYFUS. } No. 9662.

106 Defendant moves for a rule on plaintiff to show cause Friday, November 26th, 1883, why attachment herein should not be dissolved. Defendant moves to dissolve attachment herein made on following grounds:

1st. Because the affidavit for attachment is defective, insufficient, and not such as is required by law.

2d. Because the allegations of plaintiff are too vague to authorize an order for issuance of writ of attachment.

3d. Because those allegations are false.

Wherefore defendant prays that attachments herein made be dissolved.

He avers the action of pl't'ff in causing attachment was wrongful, and has damaged him in the sum of two hundred and fifty dollars, special damages for counsel fees, and in the sum of five thousand dollars general damages, for which sums he prays judgment *in solido* against plaintiff and their sureties on bond given for attachment.

He prays that said rule be made returnable on a day fixed by court, and that plaintiff be notified.

107 (Signed) JOSEPH DREYFUS.

Judgment. Rendered Nov'r 16th, 1883.

Civil District Court, Parish of Orleans.

C. GUMBEL
v.
JOSEPH DREYFUS. } No. 9662.

On motion of Braughn, Buck & Dinkelspiel, of counsel for plaintiff, and on producing to the court due proof in support of plaintiff's demand, and the law and the evidence being in favor of the plaintiff—

It is ordered, adjudged, and decreed that there be judgment in favor of the plaintiff, Cornelius Gumbel, and against the defendant, Joseph Dreyfus, for the sum of twenty-three thousand one hundred and eighty-four dollars & $\frac{57}{100}$, with legal interest thereon from October 24th, 1883, until paid, with lien and privilege on the property herein attached, and that plaintiff's claim be paid by preference over and above all other creditors, with costs of suit.

Judgment rendered on November 16th, 1883. Signed November 22d, 1883.

(Signed) W. T. HOUSTON, *Judge.*

Motion to fix Exception. Filed Dec. 5th, 1883.

C. GUMBEL
v.
JOS. DREYFUS. } No. 9662. Division "B."

108 On motion of Braughn, Buck, and Dinkelspiel, att'ys for the pl't'ff—

It is ordered by the court that the exception of J. R. G. Pitkin, garnishee herein, be fixed for trial on Friday, Dec. 14th, 1883, at 11 a. m., and counsel notified thereof.

Fieri Facias. Issued December 5th, 1884.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

C. GUMBEL
v.
JOSEPH DREYFUS. } No. 9662.

State of Louisiana, to the sheriff of the parish of Orleans, Greeting:

We command you, that by seizure and sale of the property, real and personal, rights and credits of defendant, Joseph Dreyfus, in the manner prescribed by law, you cause to be made the sum of twenty-three thousand one hundred and eighty-four dollars and $\frac{37}{100}$, with legal interest thereon from October 24th, 1883, until paid,

with lien and privilege on the property herein attached, and that plaintiff's claim be paid by preference over and above all other creditors, and also the sum of thirty-nine $\frac{45}{100}$ dollars, costs, as well as your own costs and charges, to satisfy a judgment rendered
109 against the said defendant, Joseph Dreyfus, in our civil district court for the parish of Orleans, on the 16th day of November, 1883, in favor of plaintiff, C. Gumbel; and how you shall have executed this writ you make return to our said court (within seventy days) according to law.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of our said court, this 5th day of December, in the year of our Lord 1883.

(Signed) JNO. T. FITZGERALD,
Deputy Clerk.

Sheriff's Return to Fieri Facias.

Received Dec'r 5th, 1883, and levied this writ on the property already under seizure, and notified defendant of my seizure, as will more fully appear from reference to the notice of seizure, with the returns thereon, which are hereto annexed and made part, and on January 25th, 1884, said moveable seizure was released by order of pl't'ff's att'y.

Notice of Seizure Marked "A," Annexed to Sh'ff's Return.

C. GUMBEL
v.
JOSEPH DREYFUS. } No. 9662.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

110 SHERIFF'S OFFICE, PARISH OF ORLEANS,
NEW ORLEANS, *December 5th*, 1883.

To JOSEPH DREYFUS:

Take notice that I have seized, and in three days from the service hereof shall proceed to advertise and sell according to law, all and singular the contents of the store No. 33 Tchoupitoulas street, in this city, to pay and satisfy the writ issued in this case, say the sum of $23,184.37, with interest and costs, unless the same is immediately paid.

(Signed) WM. J. GRADY,
Deputy Sheriff.

Return on Reverse of Notice.

And on December 6th, 1883, I served a copy of the within notice of seizure personally on Joseph Dreyfus, defendant herein.

(Signed) J. E. SICKFORT,
Deputy Sheriff.

And the delay within which this writ is made returnable by law having expired, I make this my return, still maintaining my seizures herein made in full force and effect.

And at the time of returning this writ I requested the clerk of this honorable court to furnish me with a copy of the same,
111 together with all my proceedings thereon endorsed according to law.

No other property found after due demand made of plaintiff's attorneys and defendant herein.

Costs and charges herein still due.

Sheriff's fee for this writ, $2.00.

Returned February 12th, 1884.

(Signed) ERNEST RICKER,
Deputy Sheriff.

Rule on J. R. G. Pitkin for Contempt. Filed December 6th, 1883.

Extract from the Minutes of Division "B," Dec. 6th, 1883.

Division B, Civil D't C't.

Present: Hon. W. T. Houston, judge.

C. GUMBEL
v.
JOSEPH DREYFUS. } No. 9662.

On motion of Braughn, Buck and Dinkelspiel, attorneys for the plaintiff, and on suggesting to the court that a writ of attachment was herein issued on October 27th, 1883, and on October 29th, 1883, executed by the sheriff of this parish by service upon the defendant and by seizure of his stock of goods contained in the store No. 33 Tchoupitoulas street; that said stock has been in the custody of said sheriff through his duly appointed keeper since said date; that on December 5th, '83, the judgment previously obtained by
112 mover against the defendant, with lien and privilege upon the property attached, having a writ of *fieri facias* issued, and was executed by said sheriff, by an additional seizure on said stock of goods. On further suggesting that one J. R. G. Pitkin, of this city, is obstructing the sheriff in his peaceable possession of said property and interferes with his control thereof—

It is ordered by the court that said Pitkin do show cause on the 14th day of December, 1883, at 11 a. m., why he should not desist from interference with the sheriff in the custody of said property, or be punished for contempt of this honorable court in obstructing the execution of its orders and judgments.

Sheriff's Return to Rule for Contempt.

Received Dec. 10th, 1883, and on the same day, month, and year I served a copy of the within rule personally on J. R. G. Pitkin, herein named.

Ret. same day.

(Signed) P. A. McINTYRE,
D'y Sheriff.

Rule on J. R. G. Pitkin, Marshal, etc., et als. Filed December 17th, 1883

C. GUMBEL
v.
Jos. DREYFUS. } No. 9662. Division "B."

113 On motion of Braughn, Buck & Dinkelspiel, attorneys for plaintiff, and on suggesting to the court that a writ of attachment issued herein on the 27th of October, 1883, was executed by seizure of the property of the defendant, especially of contents, fixtures, stock of goods, and merchandise, &c., contained in store, No. 33 Tchoupitoulas street, which seizure was effected on October 29th, 1883.

That subsequently, in due course of proceeding, a judgment was rendered in favor of mover against the defendant, maintaining the attachment, with privilege and right of preference, on the property attached.

That on the fifth day of December, 1883, said judgment having become final, a writ of *fi. fa.* was issued and the sheriff of this court directed to again seize the property seized and held under the seizure made on the writ of attachment to satisfy said judgment, and the said sheriff did again, under said writ of *fi. fa.*, seize said property.

That he has, ever since the execution of the said writ of attachment, held same under the seizure then made, and latterly under both it and the seizure made in execution of the writ of *fi. fa.*

114 Mover further suggests that the sheriff of this honorable court is about to further execute said writs of *fi. fa.* by the sale of the property seized, but is obstructed therein by various reasons: deputy marshals of the circuit court of the United States in and for the fifth circuit and eastern district of Louisiana, and by the marshal of said court, J. R. G. Pitkin, who claim and pretend to hold said property, and refuse said sheriff the full and free control, possession, and disposal thereof under his writs, under and by virtue of a seizure or seizures made, or pretended to have been made by him or them, said marshal and deputy marshals, in the execution of said writs of attachment issued from said circuit court at the instance of the following named parties, to wit:

Krebs & Speis, T. Altschul & Co., B. Dreyfus & Co., Maddux, Hobart & Co., William Adler, Corning & Co., C. Lazard, Elias Block & Sons, H. Weiller & Co., C. Anduran & Co., Lachman & Jacobi, A. Gunther & Co., Edmond Dubois, Fairbanks and Duening, Frieberg and Workum, D. M. Stadeker & Co., L. Bamberger & Co., John Os-

born, Son & Co., Arpad, Haraszthy & Co., H. A. Batjer & Co., S. Jacobi & Co., Stege & Reuling, and Hoffheimer Bros.

115 And on further suggesting that at the time of the issuance of said alleged writs of attachment from the said circuit court, the property upon which said marshal and deputies levied or attempted to levy and seize was already under the seizure made by the sheriff as hereinbefore set forth, in the custody of said sheriff and the jurisdiction of this court, and no seizure thereof could be made in the manner attempted by the United States marshal.

And further suggesting, even if such seizure could be made and was made, that same was subsequent, in point of time and execution, to the seizure effected by the sheriff of this honorable court, as first vested with jurisdiction over the property seized, appertains the duty and power to regulate the effect of said and all subsequent seizures, and distribute proceeds of the property when sold; further suggesting that the defendant has suspended business, is actually insolvent, and the property seized is insufficient in value and

116 amount to pay and satisfy all writs issued against said defendant and his property; that at the same time with the writs herein and before any seizure of the said marshal was made or attempted under said writs from said circuit court, seizures under attachments issued from this court were made in the suits of S. Gumbel & Co. *v.* Joseph Dreyfus, No. 9668, and Simon and Loeb *v.* Jos. Dreyfus, No. 9664, of the docket hereof, and said property seized is insufficient to satisfy these writs:

It is ordered that J. R. G. Pitkin, marshal of the circuit court of United States for the fifth circuit and eastern district of Louisiana, and Krebs and Speis, T. Altschul & Co., B. Dreyfus & Co., Maddux, Hobart & Co., William Adler, Corning and Co., C. Lazard, Elias Block & Sons, H. Weiller & Co., J. Anduran & Co., Lachman and Jacobi, A. Gunther and Co., Edmond Dubois, Fairbanks and Duenwig, Freiburg & Workum, Isaac Hays, D. M. Stadeker and Co., L. Bamberger and Co., John Osborn, Son and Co., Arpad, Haraszthy & Co., H. A. Batjer & Co., S. Jacobi & Co., Stege and Reuling, and Hoffheimer Bros., said attaching creditors, do show, cause on Friday, the 21st of December, 1883, at 11 o'clock a. m., why the prop-

117 erty seized under the attachment issued in this cause, and the suit of S. Gumbel & Co. *v.* Jos. Dreyfus, No. 9663, and Simon & Loeb *v.* Jos. Dreyfus, No. 9664, civil district court, should not be sold (or a sufficient amount thereof to satisfy said writs), the rank of the attaching creditors determined, and the proceeds of sale distributed accordingly; and

It is further ordered that S. Gumbel & Co., Simon and Loeb, A. Lehman and Co., Bassetti and Xiques, and E. H. Gato, attaching creditors in this court, be notified and made parties hereto.

Endorsed on Reverse of Foregoing Rule on Pitkin, etc.

Service accepted Dec. 17th, 1883.

(Signed) ERNEST T. FLORANCE,
Att'y for Krebs & Speis, Maddux, Hobart & Co., T. Altschul & Co., B. Dreyfous & Co., L. Bamberger & Co., D. W. Stadeker & Co., E. H. Gato.

(Signed) LEOVY & KRUTTSCHNITT,
Att'ys for Bassetti and Xiques.

(Signed) GEO. H. THEARD,
Att'y for Osborn, Son and Co.

118 (Signed) JOHN M. BONNER,
For Elias Block & Son.

(Signed) MERRICK, FOSTER & MERRICK,
For Stege & Reuling.

(Signed) JOSEPH P. HORNOR AND F. W. BAKER,
For H. A. Batjer & Co., A. Gunther & Co., Lachman and Jacobi, J. Anduran and Co.

(Signed) D. C. & L. L. LABATT,
Att'y for S. Jacobi & Co., H. Weiller & Co.

(S'g'd) A. LEHMAN & CO.,
Per DUFOUR.

(S'g'd) CHAS. S. RICE,
Att'y for Corning & Co. and Freiberg & Workum.

(Signed) T. GILMORE AND SONS,
For W. Adler and C. Lazard.

(Signed) A. B. PHILIPS,
Att'y for E. Dubois and Fairbanks & Duenwig.

(Signed) HUNTINGTON & DUFOUR, *Att'ys at Law.*

(Signed) BRAUGHN, BUCK & DINKELSPIEL,
For S. Gumbel & Co. and Simon and Loeb.

Sheriff's return to rules, &c., received December 17th, 1883, and on Dec. 17, '83, I served a copy of the within rule on J. R. G. Pitkin, marshal, etc., in person.

Ret. same day.

(Signed) P. A. McINTYRE,
D'p'y Sh'ff.

119 And on December 17th, 1883, I served a copy of the within rule on Hoffheimer Bros. through George Denegre, one of their attorneys, in person.

Ret. same day.

(Signed) P. A. McINTYRE,
Deputy Sheriff.

Exception to Jurisdiction. Filed January 4th, 1884.

Civil District Court for the Parish of Orleans, Division B.

S. GUMBEL & Co.
v.
JOSEPH DREYFUS. } No. 9662.

Now into court, through undersigned counsel, the firm of Stege

Simon and Loeb *v.* Joseph Dreyfus, No. 9664 of the docket of the civil district court for the parish of Orleans.

In testimony whereof, I hereunto set my hand and affix the impress of the seal of this honorable court, at New Orleans, La., on this 11th day of March, in the year of our Lord one thousand eight hundred and eighty-four, and in the 108th of the Independence of the United States.

[SEAL.] (Signed) JAS. T. CLARK, *Clerk.*

125 *Statement of Facts. Filed 1st April,* 1884.

HOFFHEIMER BROS. *v.* JOSEPH DREYFUS. } No. 10359.

* * * * * * *

These causes are submitted together with reference to the distribution of the proceeds of property seized under attachment. The questions are as to the claim of a creditor under an attachment from the State court, and as to the order of priority of creditors obtaining attachments in this court.

Various creditors had obtained attachments on Sunday in this court which were also levied on Sunday. The same and other creditors obtained attachments in several suits also in this court, some early Monday morning, shortly after midnight, and others between 8 and 10 o'clock a. m., which were also levied upon the same property.

The intervenor had obtained his writ from the State court on Saturday. Early Monday morning, shortly after midnight,
126 and while the marshal was holding possession of the property under the Sunday writ alone, the sheriff came to the store where the property was situated for the purpose of serving the writ and demanded entrance, which the marshal refused. The sheriff placed his keepers around the building and guarded the same continuously down to the time of the sale, and served notice of seizure and subsequently process of garnishment upon the marshal in charge of the store before the service of any of the Monday writs who had executed the process of attachment from this court. The marshal preserved his possession without interruption from the moment of seizure down to the time he sold the property under the Monday writs, the Sunday writs having been abandoned. The property seized was the wines and brandies, etc., the stock of a wholesale liquor store.

1. As to the effect of what was done by the sheriff, nothing is before the court except the proceeds of a sale. They and
127 they alone can have an award who show title and since all claim under process against the property of a common debtor, those alone who show a levy of the process upon the property. For in this State the issuunce and existence of the process create no lien. It disposes of this part of the case to say that the sheriff made no seizure, no caption of the property, its possession

was withheld from him and access to it was forcibly denied him. Whether this was done under color of good or bad writ, or without any writ, all seizure was prevented and no lien was effected. This would end the case of the intervenor as to any privilege upon the fund unless he can maintain that the marshal, holding under color of a writ from this court, can be made to hold also under a writ from the State court subsequently served by the garnishment process. The authorities for this proposition cited are Patterson *v.* Stephenson, unreported, decided by the supreme court of
128 Missouri, at the April term, 1883, and Bates *v.* Days, 17 Federal Reporter, p. 167. Those cases are put by the courts which decided them upon a statute of the State of Missouri, which was deemed to have been adopted by the practice act of Congress regulating the procedure in the Federal courts. In Louisiana we have no such statute, and there is, therefore, no need to discuss the question as to what would be the legal consequences if one existed. In this State the courts are to be guided by the doctrine which is settled by the cases of Hagan *v.* Lucas, 10 Peters, 400, and Taylor *v.* Carryl, 20 Howard, 583, to the effect that when property susceptible of manual delivery has been seized and is held by the officer of and under process from the court of one jurisdiction it is incapable to be subjected to seizure by another officer of and under process from the court of another jurisdiction. The authorities are collated in Wilmer *v.* Atlanta and Richmond Air Line Railroad Company, 2 Woods, pp. 427 and 428. It follows, then, that since the
129 goods were and continued to be in the physical possession and custody of the marshal, under writs of this court, the intervenor could have acquired and did acquire no interest in the goods under his writ from the State court, and he can have no claim to the proceeds arising from their sale.

2. As to the order of priority of the creditors who attached under the writs from this court: No right is claimed and no right could have been acquired under the Sunday writs or seizures. The statute prohibits, C. P., art. 207, the institution of suits and all judicial proceedings on Sunday. The question then is to the priority of the attachments which were issued on Monday, *i. e.*, after 12 o'clock on Monday morning. The statute makes the priority of attachments upon the same property to depend upon seizure, C. P., art. 723. Scholefield *v.* Bradler, 8 Martin, O. S., 258; Hopp *v.* Glover, 15 L., 461; Hermon *v.* Juge, 6 Ann., 768. Priority is to be determined by noticing, when necessary, fractions of the day. Tufts *v.* Carrodine, 4 Ann., 430. The property was already in the possession of
130 the marshal, and there is established a definite order in which the writs came into his hands. It is contended that, therefore, this order establishes their rank as liens upon the property. When property is already in the hands of an officer in order to effect a seizure it need no overt act beyond his return upon the later process in order to effect a seizure. Turner *v.* Austin, 16 Mass., 181; Drake on Attachments, § 269. But it must appear in some way that the officer commenced to hold under the later processes. The mere receipt of process does not effect a levy. In these cases the

deputy marshal, who already held by keepers the property, received at the clerk's office some half-dozen writs in the order of the number of the causes upon the docket, and then proceeded to give affect to the processes by proceeding with them, and making new levies. He probably did this because of fears as to the validity of his possession under the Sunday writs as the basis of subsequent seizures.

Whatever was his reason, he made fresh levies. His returns
131 show that he levied first the writ in the case of Corning & Co., subject only to the Sunday writs, and that he levied the writs of the next seizing creditors subsequently and immediately after the levy in the case of Corning & Co.

I think this manner and order of his levying these writs should control. In Turner *v.* Austin, the court say that when the officer has several writs in his hands at the same time he has a power as to the order of seizure which is liable to abuse. Nevertheless, they maintain that the time of the actual levy or commencement to hold determines. Of course if the officer wrongfully levied or omitted to levy, or wrongfully postponed the levy of one writ to that of another, he would render himself liable; but in this case, since the levies were under writs simultaneously held, though not exactly simultaneously received, upon property already in the officer's possession, but, notwithstanding this fact, were independently and additionally made, it seems to me the question in dispute must
132 be settled by the evidence furnished by the returns. The returns indicate the order in which he levied or commenced to hold under the respective writs. This would, then, settle the order of priority of the several writs of attachment, unless the position taken by the counsel in the case of H. Weiller & Co. is correct. He contends that while his writ was last received and last levied, that it is entitled to precedence, and indeed to be counted the sole valid writ, because the plaintiffs in the earlier writs had used Sunday suits and Sunday processes to detain the property until the Monday writs could be obtained and levied, and that of the writs not so tainted his is the first. As a proposition of law, it is indisputable that when a plaintiff has unlawfully obtained possession of a debtor's property for the purpose of levying process upon it, such levy is wrongful and cannot be upheld as against one who is so situated that he can urge its invalidity. Wells *v.* Gurney, 8; Barnes *v.* Cress, 769; Isley
133 *v.* Nichols, 12 Pick., 270, and Closson *v.* Morrison, 47 New Hampshire, 482. If this was a suit brought by the debtor against the officer, or if the creditor who attempted to attach through the sheriff had been able to acquire any lien upon the property sought to be reached, then the objection could be urged. But it cannot avail as presented by this creditor; for either the Sunday plaintiffs did not detain unlawfully, and did not thereby obtain a week day seizure, or else the party here urging the objection is endeavoring equally to profit by the detention. It is as if plaintiff had brought property within a jurisdiction and then seized, and subsequently a second plaintiff had obtained and levied process and sought to establish priority by urging against the first plaintiff the

wrongful importation. The answer would be that the illegality furnished the opportunity for both seizures, and neither plaintiff could urge it against the other. Until some party presents a
134 case whose title — independent of the detention the court can be governed only by the order in which the levies were made.

The seizure of Corning & Co., No. 10354, therefore ranks first. Next, and as simultaneous seizures, must rank these in Krebs & Spiess, Maddox, Hobart & Co., T. Altsheed & Co., B. Dryfus & Co., Hoffheimer & Co., Wm. Adler, and Calmer Lazard.

And after these, as well as that of Elias Block, the seizure of H. Weiller & Co., which were effected subsequently, viz., at 10.35 of Monday morning. Since the proceeds will more than satisfy the judgment in the case of the first seizure, and will not satisfy the judgments of those cases of simultaneous seizures, the costs must first be paid; second, the judgment to Corning & Co. and the residue must be divided *pro rata* among Krebs & Spiess, Maddox, Hobart & Co., T. Altsheed & Co., B. Dreyfus & Co., Hoffheimer & Co., William Adler, and Calmer Lazard, according to the amount of their respective judgments, and let the matter be referred to E. R.
135 Hunt, commissioner, to make the tableau or distribution.

The foregoing is the statement of facts and my conclusions of law derived from them in this cause, the jury having been waived.

(Signed) EDWARD C. BILLINGS, *Judge.*

Rule for New Trial. Entered & Filed 4th April, 1884.

U. S. Circuit Court.

Hon. Judge E. C. Billings, presiding.

HOFFHEIMER *et al. v.* JOS. DREYFUS.

On rule to distribute. Motion for a new trial.

On motion of D. C. & L. L. Labatt, counsel for H. Weiller & Co., and on suggesting to the court that the decision herein rendered is contrary to law and evidence, it is ordered that the parties show cause, on Saturday, 5th inst., at 11 o'clock a. m., why a new trial should not be granted on the following grounds:

1st. That the judgment is clearly contrary to law and evi-
136 dence.

2d. That all the parties to this distribution are respectively plaintiffs and defendants, or intervenors *pro interesse suo*, and therefore can urge any defence personal to Dreyfus which he could successfully plead, because *in concurso* the fund must be first distributed according to the rights of parties as against defendant, and afterwards as against each other, and may properly plead any prescription, payment, or any defence, if the defendant is insolvent. 16th A., 345; Canal B. *v.* Beard, 3 L., 201; O. C. C., 3429.

2. That the marshal, being in illegal possession under the Sunday writs, Dreyfus was not divested, and remained constructively owner

and possessor of the property unlawfully detained, and no valid seizure could be made by the marshal in his own hands thereon, so as to confer priority over other creditors, nor do the returns show that he served Dreyfus with the second writs until after Monday morning, at which time he was in possession of Weiller &
137 Co.'s writs, and had levied the same by service on Dreyfus personally.

3d. That the court inadvertently errs in according to creditors who have abused the machinery of the courts a preference over those equally vigilant, but within the law.

Marshal's Return. Filed 4 April, 1884.

On the 3d day of April, 1884, I served a true copy of the within rule for new trial on Bayne & Denegre, by handing the same to Mr. Bayne, in person; same day served T. Gilmore & Sons, by handing the same to J. T. Gilmore, one of the firm, in person; same day served C. S. Rice, by handing the same to him, in [person], and same day served Semmes & Payne, by handing the same to T. J. Semmes, of the firm of Semmes & Payne, of the firm, in person, all in this city.

(Signed) DAN. A. ROSE,
D'y U. S. Marshal.

Rule for New Trial. Entered and Filed 2nd April, 1884.

U. S. Circuit Court, Eastern District of Louisiana.

138 KERBS & SPIESS, MADDUX, HOBART & Co., HOFFHEIMER BROS., v. JOS. DREYFUS. } 10355. 10356. 10359.

On motion of T. J. Semmes & Payne, and Ernest T. Florance, of counsel for Kerbs & Spiess and Maddux, Hobart & Co., it is ordered that B. Dreyfous & Co., T. Altschul & Co., Corning & Co., Hoffhiemer Bros., William Adler, Calmer Lazard, and Jos. Dreyfus show cause, on Saturday, April 5th, 1884, at 11 o'clock a. m., why there should not be a new trial of the *concursus* herein, on the ground that the judgment herein rendered on April 1st, 1884, is contrary to the law and the evidence, for the following reasons, viz:

That the property being under seizure, and in the physical possession of the marshal at the moment of the receipt by the marshal of the subsequent writs, the seizures under said writs took effect and were complete *eo instanti*, and according to the order of the physical delivery of each writ to the marshal or his deputy.

139 That no act or intent of the marshal could prevent or retard the operation of law which subjected to seizure under the writs the property then in his physical possession at the moment and by the mere act of delivery of the writs to the officer.

That there is no evidence of such act or intent on the part of the marshal, whereby priority would be acquired by Corning & Co., other than the mere declaration of the marshal's return, whereas the

evidence shows that at the time of seizure under Corning & Co.'s writ, if the seizure is to be considered made on a writ, at the store on Tchoupitoulas street, the marshal had in his possession, with instructions to seize, the writs of plaintiffs in 10355 and 10356.

That it was the duty of the marshal, if independent and new levies were made, to make same in the order in which the writs were delivered to him; and that it cannot be presumed that such
140 officer violated his duty and abused his power; and that on the contrary, in the absence of conclusive evidence to such effect, it must be presumed that he executed said writs according to law.

Service accepted.

T. ALTSCHUL & CO.,
B. DREYFUS & CO.,
Per E. T. FLORANCE, *Attorney.*

New Orleans, April 2, '84.

Marshal's Return. Filed 4th April, 1884.

Received April 3, 1884, by the U. S. marshal, and on the 3 day of April, 1884, I served a true copy of the within rule for a new trial as follows: On Bayne & Denegre, by handing the same to Mr. Bayne, one of the firm, in person; C. S. Rice, by handing the same to him in person; T. Gilmore & Sons, by handing the same to J. T. Gilmore, one of the firm, in person; Semmes & Payne, by handing the same to T. J. Semmes, one of the law firm, in person.

(Signed) DAN. A. ROSE,
D'y U. S. Marsha.

Rule for New Trial. Entered and Filed April, 2d 1884.

141 HOFFHEIMER BROS. v. JOSEPH DREYFUS. } No. 10359.

On intervention and third opposition of C. Gumbel.

To the honorable the judges of the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

On motion of Braughn, Buck & Dinkelspiel, and A. H. Leonard and Morris Marks, counsel for C. Gumbel, intervenor and third opponent, it is ordered that all parties to the judgment herein rendered on Tuesday, April 1st, and in interest herein, show cause on Saturday, the 5th day of April, 1884, at 11 a. m., why the said judgment should not be set aside and a new trial granted for the reasons, to wit:

1st. That said judgment is contrary to law and evidence, especially in this, that the court erred in not admitting the validity of the seizure made in behalf of C. Gumbel on Monday morning, October the 29th, 1883; in this further, that said seizure, having
142 been effected at a time before any writs of attachment, under which rights of preference are claimed herein, were placed in

the hands of the marshal of the court, entitled mover to payment out of the proceeds in preference to any other attaching creditors herein, and the court erred in refusing so to decide; in this further, that [the] court erred in holding that there is or was any substantial difference in the laws regulating the effect of seizures by attachment; that the jurisprudence of the State on said subject, as settled by the decisions of the supreme court, is identical with that of the State of Missouri as fixed by statute, and such jurisprudence as part of the law on attachments is as much within the scope and contemplation of the act of Congress as if same were expressed in a legislative enactment.

2nd. That the court erred in refusing to hold and decide that the demand upon the marshal herein by the civil sheriff, notice
143 served, and the process of garnishment on said marshal constituted a valid seizure.

3rd. That the possession of the marshal of this court, though under the Sunday writs, was a possession under color of law, could not physically be disturbed by the sheriff of the civil district court, and the demand, notices, and garnishment aforesaid, fixed the rights of mover as attaching creditor, and entitles him to share in the distribution herein, his rights to be determined according to the time at which the said acts of seizure were done.

4th. The jury having been waived, the court should, before rendering judgment, have made a specific finding of the facts, and so far as the reasons for judgment recites the facts, or purport to recite the facts proved in the case, same is incomplete in not stating all the material facts, and a serious error is contained therein, to wit, in the statement that the garnishment process of C. Gumbel was
144 served on the deputy marshal, whereas the fact is that it was served on the marshal, and at a time prior to that at which the attachments opposed to mover were placed in the hands of the marshal.

Marshal's Return. Filed 4 April, 1884.

Received April 3, 1884, by the U. S. marshal, and on the 3d day of April, 1884, I served a true copy of the within rule for new trial, as follows, on Bayne & Denegre, by handing the same to Mr. Bayne, one of the firm, in person; C. S. Rice, by handing the same to him in person; T. Gilmore & Sons, by handing the same to J. T. Gilmore, of the firm, in person; Semmes & Payne, by handing the same to T. J. Semmes, of the firm, in person.

(Signed) DAN. A. ROSE,
D'y U. S. Marshal.

Continuance.

Extract from the Minutes, November Term, 1883.

NEW ORLEANS, SATURDAY, *April 5th*, 1884.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

145 HOFFHEIMER BROS. v. JOSEPH DREYFUS. } 10359.

* * * * *

Upon suggesting to the court that Thos. J. Semmes, Esq., one of the counsel for movers in rules for new trial is absent from the city, it was ordered that said rules be continued to Saturday, the 19th instant, at 11 o'clock a. m.

Continuance.

Extract from the Minutes, November Term, 1883.

NEW ORLEANS, SATURDAY, *April 19th* 1884.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

HOFFHEIMER BROS. v. JOSEPH DREYFUS. } 10359.

* * * * *

On motion of Carroll Payne, Esq., suggesting that Mr. Semmes will not return from Washington before the 26th or 27th instant, and upon motion in that behalf, it is ordered that the rules for new trial in above cases be continued to Saturday, 3d day of May,
146 1884, at 11 o'clock a. m.

Submission of Rules.

Extract from the Minutes, April Term, 1884.

NEW ORLEANS, SATURDAY, *May 3d*, 1884.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

HOFFHEIMER BROS. v. JOSEPH DREYFUS. } 10359.

* * * * *

These causes came on to be heard on the rules for new trial and were argued by the counsel for the parties, respectively, and submitted, and the court took time to consider.

Order New Trial Refused.

Extract from the Minutes, April Term, 1884.

NEW ORLEANS, MONDAY, 19 *May*, 1884.

Court met persuant to adjournment.
Present: Hon. E. C. Billings, district judge.

HOFFHEIMER BRO.
v.
JOSEPH DREYFUS. } 10359.

* * * * *

147 The court having duly considered the motions for new trial in above causes and the argument of counsel thereon, does now order that new trials be refused, and that all rights be reserved to the parties moving for new trials to proceed in equity; that this order shall also apply to the case of the intervenor Gumbel.

Further ordered that the right of all parties who have obtained writs of sequestration against the property of the defendant Dreyfus be reserved.

Judgment.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana. November Term, 1883.

NEW ORLEANS, TUESDAY, *April* 1*st*, 1884.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

Corning & Co. *v.* Joseph Dreyfus.—10354.

Krebs & Spiess *v.* Joseph Dreyfus.—10355.

Maddux, Hobart & Co. *v.* Joseph Dreyfus.—10356.

T. Altschul & Co. *v.* Joseph Dreyfus.—10357.

B. Dreyfous & Co. *v.* Joseph Dreyfus.—10358.

Hoffheimer Bros. *v.* Joseph Dreyfus.—10359.

William Adler *v.* Joseph Dreyfus.—10360.

148 C. Lazard *v.* Joseph Dreyfus.—10361.

The above causes came on to be heard on the motion for the distribution of the proceeds of the property seized under attachment, and on the intervention and 3d opposition of C. Gumbel, and was argued by counsel.

On consideration whereof, it is ordered, adjudged, and decreed that the intervention and third opposition of C. Gumbel be, and the same is hereby, dismissed for the reason that the sheriff, under the writ of the intervenors, made no levy, and therefore has no privilege upon the fund.

It is further ordered, adjudged, and decreed that the said proceeds be distributed as follows, to wit:

1st. The costs in above-entitled and numbered cases.

2nd. The judgment in the case of Corning & Co.

And that the residue of said proceeds be distributed *pro rata* among Kerbs & Spiess, Maddux, Hobart & Co., T. Altschul & Co., B. Dreyfous & Co., Hoffheimer Bros., Wm. Adler, and C. Lazard, the 149 said Lazard to share in the *pro rata* after deducting from his claim the net proceeds of the lot of empty barrels, and the

five barrels of whiskey seized and sold separately, upon which his lien is recognized.

And it is further ordered that the matter be referred to E. R. Hunt commissioner, to make the tableau of distribution.

It is further adjudged and decreed that the lien and privilege of C. Cavaroc and Son, intervenors, on $621.75, and of Basseti and Xiques, intervenors, on $891.10, the proceds of sale of property sold by them respectively to the defendant Dreyfus be recognized, and that after deducting the costs of their proceedings, and their *pro rata* of the costs of sale of said property, they be paid the net proceeds thereof.

Judgment rendered April 1st, 1884.

Judgment signed May 20th, 1884.

(Signed) EDWARD C. BILLINGS, *Judge.*

Motion and Order for Writ of Error. Entered and Filed 29th May, 1884.

150 HOFFHEIMER BROS. v. JOS. DREYFUS. } No. 10359.

On intervention of and third opposition of C. Gumbel.

To the hon. the judges of the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

On motion of A. H. Leonard, Morris Marks, and Braughn, Buck & Dinkelspiel, attorneys for C. Gumbel, plaintiff in intervention, and suggesting to the court that said intervenor is aggrieved by the final judgment herein rendered on April 1st, and signed on May 20th, 1884, and is informed that there is error in said judgment to his prejudice, and suggesting that he is desirous of prosecuting a writ of error therefrom to the Hon. the Supreme Court of the United States—

It is ordered that a writ of error be allowed said intervenor from said judgment rendered April 1st, and signed May 20th, 1884, to the Supreme Court of the United States, returnable in said court
151 on the second Monday of October, 1884; said writ to operate supersedeas on plaintiff in error giving bond in the sum of $3,000 dollars, conditioned as the law directs.

(Endorsed:) Service accepted and citation of writs of error herein and issuance of same waived. N. O., Aug. 11, '84. (Signed) John M. Bonner, att'y for Elias Block & Sons. (Signed) T. Gilmore & Sons, att'ys for C. Lazard & Wm. Adler. (Signed) H. Heidenhain, att'y for Arpad, Haraszthy & Co. (Signed) A. B. Philips, att'y for E. Dubois & Fairbanks & Duening. (Signed) Joseph P. Hornor, F. W. Baker, att'ys for Lachman Jacobi *et als.*, C. Anderson & Co., A. Gunther & Co., and H. A. Batjer & Co. (Signed) Chas. S. Rice, att'y for Freiberg & Workum and Corning & Co. (Signed) Merrick, Foster & Merrick, att'ys for Stege & Reiling. (Signed) D. C. & L. L. Labatt, for Weiler & Co., S. Jacoby & Co., *et* Freiberg & Worku . (Signed) Miller & Finney, for Hoffheimer.

152 *Bond for Writ of Error. Filed 14th June, 1884.*

HOFFHEIMER BRO.
v.
JOSEPH DREYFUS, CORNELIUS GUMBEL, Intervenor, etc. } No. 10359.

Know all men by these presents, that we, Cornelius Gumbel, as principal, and Ferdinand Gumbel, as surety, are held and firmly bound unto J. R. G. Pitkin, marshal, to Krebs & Spiess, T. Altschul & Co., B. Dreyfus & Co., Maddox, Hobbart & Co., Lachman & Jacobi, A. Gunther & Co., Edmund Dubois, Fairbanks & Duening, Freiberg & Workum, Isaac Hays, D. M. Stadeker & Co., C. Lazard, Elias Block & Sons, H. Weiller & Co., J. Anduran & Co., Wm. Adler, Corning & Co., L. Bamberger & Co., John Osborne, Son & Co., Arpard, Haraszthey & Co., H. A. Batjer & Co., S. Jacobi & Co., Stege & Reueling, and Hoffheimer Bros. in the full and just sum of three thousand ($3,000) dollars, to be paid to the said named parties,

153 any or all of them, according to their respective interests, their certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this sixth (6th) day of June, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, in a suit depending in said circuit court, wherein Hoffheimer Bros. are plaintiffs, and Joseph Dreyfus defendant, and said C. Gumbel is plaintiff in intervention and third opposition, and all said above-named parties are defendants to said intervention and third opposition, judgment was rendered against said C. Gumbel, plaintiff in intervention, etc., and in favor of said defendants in intervention,

154 and the said Cornelius Gumbel having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said parties hereinabove named, citing and admonishing them, and each of them, to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such that if the said Cornelius Gumbel shall prosecute his writ to effect, and answer all damages and cost if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) C. GUMBEL. [L. S.]
(Signed) F. GUMBEL. [L. S.]

Sealed and delivered in the presence of—
(Signed) CHAS. F. BUCK.

Bond approved.
(Signed) EDWARD C. BILLINGS, *Judge.*

155 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 154 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of Hoffheimer Brothers, C. Gumbel, intervenor and third opponent, *v.* Joseph Dreyfus, No. 10359 of the docket of said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 17th day of September, A. D. 1884.

E. R. HUNT, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 17th day of September, A. D. 1884.

EDWARD C. BILLINGS, *Judge.*

156 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Cornelius Gumbel, intervenor, third opponent, and J. R. G. Pitkin, marshal, and Krebs and Speis, A. Gunther & Co., Edmund Dubois, T. Altschul & Co., B. Dreyfus & Co., Maddox, Hobart & Co., Lachman & Jacobi, Fairbank & Dunwig, Freiburg & Workum, Isaac Hays, D. M. Stodaker & Co., C. Lazard, Elias Block & Sons, H. Weiller & Co., J. Anduran & Co., Wm. Adler & Co., Corning & Co., L. Bamberger & Co., Jno. Osborne, Sons & Co., Aspard Harathzy & Co., H. A. Baltzer & Co., Steyer & Reuding, and Hoffheimer Bros. are defendants in said intervention and third opposition, the proceedings being had on the record of Hoffheimer Bros. *vs.* Jos. Dreyfus, No. 10359 in your court, a manifest error hath happened, to the great damage of the said Cornelius Gumbel, intervenor & third opponent, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that

then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 4th day of June, in the year of our Lord one thousand eight hundred and eighty-four.

E. R. HUNT,
Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

[Endorsed:] United States circuit court. No. 10359. Hoffheimer Bros. *versus* Jos. Dreyfus. Writ of error. Cornelius Gumbel, intervenor, third opponent. No. —. U. S. circuit court, eastern district of Louisiana. Filed June 14, 1884. E. R. Hunt, clerk.

157 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to L. Bamberger and Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein C. Gumbel, plaintiff in intervention, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said C. Gumbel, intervenor, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 5th day of September, in the year of our Lord one thousand eight hundred and eighty-four.

EDWARD C. BILLINGS, *Judge.*

158 [Endorsed:] United States circuit court. No. 10359. C. Gumbel, intervenor, plaintiff in error, *vs.* L. Bamberger & Co., defendants in error. Citation.

Marshal's Return.

Received Sept. 5, 1884, by the U. S. marshal, and on Sept. 8th, 1884, I served a true duplicate of this the original citation in error on L. Bamberger & Co., defendants in error herein, by delivering the same to E. T. Florance, Esq., the att'y of record for said de-

fendants in error, in person, in the city of New Orleans, eastern district of Louisiana, he accepting service in their behalf.

J. R. G. PITKIN,
U. S. Marshal, East. Dist. of La.
By E. S. CURRY,
D'y U. S. Marshal.

Personally appeared before me E. S. Curry, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true duplicate hereof as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal.

Subscribed and sworn to before me, this 9th Sept'r, 1884.
[SEAL.] T. M. C. HYMAN,
D'y Clerk U. S. Circuit Court, Eastern District of Louisiana.

159 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to John R. G. Pitken, U. S. marshal for the eastern district of Louisiana, Greeting

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein C. Gumbel, plaintiff in intervention, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said C. Gumbel, intervenor, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 5th day of September, in the year of our Lord one thousand eight hundred and eighty-four.

EDWARD C. BILLINGS, *Judge.*

160 [Endorsed:] United States Circuit Court. No. 10359. C. Gumbel, intervenor, plaintiff in error, *vs.* John R. G. Pitkin, U. S. marshal, east. dist. of La., defendant in error. Citation. No. ——. U. S. circuit court, eastern district of Louisiana. Filed Sept. 16, 1884. E. R. Hunt, clerk.

Marshal's Return.

Received Sep. 5, 1884, by U. S. marshal.
"Service hereof accepted," Sept'b'r 5th, 1884.

J. R. G. PITKIN,
U. S. Marshal, E. D. of La.,
By E. S. WANZBURGER,
Chief Deputy.

161 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to B. Dreyfous and Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein C. Gumbel, plaintiff in intervention, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said C. Gumbel, intervenor, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court United States, this 5th day of September, in the year of our Lord one thousand eight hundred and and eighty-four.

EDWARD C. BILLINGS, *Judge.*

162 [Endorsed:] R. United States circuit court. No. 10359. C. Gumbel, intervenor, plaintiff in error, *vs.* B. Dreyfus & Co., defendants in error. Citation.

Marshal's Return.

Received Sep. 5, 1884, by the U. S. marshal, and on Sept. 8th, 1884, I served a true duplicate of this, the original citation in error, on B. Dreyfous & Co., defendants in error herein, by delivering the same to E. T. Florence, Esq., the att'y of record for said defendants in error, in person, in the city of New Orleans, eastern district of Louisiana, he accepting service in their behalf.

J. R. G. PITKIN,
U. S. Marshal East. D's't of La.,
By E. S. CURRY,
D'y U. S. Marshal.

Personally appeared before me, E. S. Curry, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true duplicate hereof, as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal.

Subscribed and sworn to before me, this 9 Sept., A. D. 1884.

[SEAL.] T. McC. HYMAN,
D'y Clerk U. S. Circuit Court, Eastern District of Louisiana.

163 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to D. W. Stadeker and Company, Greeting:

You are hereby cited and admonished to be and appear at a Su-

preme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein C. Gumbel, plaintiff in intervention, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said C. Gumbel, intervenor, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 5th day of September, in the year of our Lord one thousand eight hundred and eighty-four.

EDWARD C. BILLINGS, *Judge.*

164 [Endorsed:] R. United States circuit court. No. 10359. C. Gumbel, intervenor, plaintiff in error, *vs.* D. W. Stadeker & Co., defendants in error. Citation.

Marshal's Return.

Received Sep. 5, 1884, by the U. S. marshal, and on Sept. 8th, 1884, I served a true duplicate of this, the original citation in error, on D. W. Stadeker & Co., defendants in error herein, by delivering the same to E. T. Florence, Esq., the attorney of record for the said defendants in error, in person, in the city of New Orleans, eastern district of Louisiana, we accepting service in their behalf.

J. R. G. PITKIN,
U. S. Marshal, Eastern Dist. of La.,
By E. S. CURRY,
D'y U. S. Marshal.

Personally appeared before me, E. S. Curry, a lawful deputy of *of* J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true duplicate hereof, as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal.

Subscribed and sworn to before me, this 9th Sept'r, A. D. 1884.

[SEAL.] T. McC. HYMAN,
D'y Clerk U. S. Circuit Court, Eastern District of Louisiana.

165 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Maddux, Hobart and Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein C.

Gumbel, plaintiff in intervention, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said C. Gumbel, intervenor, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 5th day of September, in the year of our Lord one thousand eight hundred and eighty-four.

EDWARD C. BILLINGS, *Judge.*

166 [Endorsed:] R. United States circuit court. No. 10359. C. Gumbel, intervenor, plaintiff in error, *vs.* Maddux, Hobart & Co., defendants in error. Citation.

Marshal's Return.

Received Sep. 5, 1884, by the U. S. marshal, and on Sept. 8th, 1884, I served a true duplicate of this, the original citation in error, on Maddux, Hobart & Co., defendants in error herein, by delivering the same to E. T. Florence, Esq., the att'y of record for said defendants in error, in person, in the city of New Orleans, eastern district of Louisiana, he accepting service in their behalf.

J. R. G. PITKIN,
U. S. Marshal, East. D'st of La.,
By E. S. CURRY,
D'y U. S. Marshal.

Personally appeared before me, E. S. Curry, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true duplicate hereof, as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal.

Subscribed and sworn to before me, this 9th Sept'r, A. D. 1884.

[SEAL.] T. McC. HYMAN,
D'y Clerk U. S. Circuit Court, Eastern District of Louisiana.

167 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to T. Altschul and Company Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein C. Gumbel, plaintiff in intervention, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said C. Gumbel, intervenor, as in

said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 5th day of September, in the year of our Lord one thousand eight hundred and eighty-four.

EDWARD C. BILLINGS, *Judge.*

168 [Endorsed:] R. United States circuit court. No. 10359. C. Gumbel, intervenor, plaintiff in error, *vs.* T. Altschul & Co., defendants in error. Citation.

Marshal's Return.

Received Sep. 5, 1884, by the U. S. marshal, and on Sept. 8th, 1884, I served a true duplicate of this the original citation in error on T. Altschul & Co., defendants in error herein, by delivering the same to E. T. Florance, Esq., att'y of record for said defendants in error, in person, in the city of New Orleans, eastern district of Louisiana, he accepting service in their behalf.

J. R. G. PITKIN,
U. S. Marshal, East. Dist. of La.,
By E. S. CURRY,
D'y U. S. Marshal.

Personally appeared before me, E. S. Curry, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true duplicate hereof, as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal.

Subscribed and sworn to before me, this 9th Sept., A. D. 1884.

[SEAL.] T. McC. HYMAN,
D'y Clerk U. S. Circuit Court, Eastern District of Louisiana.

169 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Kerbs and Spiess, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein C. Gumbel, plaintiff in intervention, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said C. Gumbel, intervenor, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the

Supreme Court of the United States, this 5th day of September, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] EDWARD C. BILLINGS, *Judge.*

170 (Endorsed:) R. United States circuit court. No. 10359. C. Gumbel, intervenor, plaintiff in error, *vs.* Kerbs & Spiess, defendants in error. Citation.

Marshal's Return.

Received Sep. 5, 1884, by the U. S. marshal, and on Sept. 8th, 1884, I served a true duplicate of this the original citation in error on Kerbs & Spiess, defendants in error herein, by delivering the same to E. T. Florance, Esq., att'y of record for said defendants in error, in person, in the city of New Orleans, eastern district of Louisiana, he accepting service in their behalf.

J. R. G. PITKIN,
U. S. Marshal, East. D's't of La.,
By E. S. CURRY,
D'y U. S. Marshal.

Personally appeared before me E. S. Curry, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true duplicate hereof, as set forth in his official return herein.

E. S. CURRY,
D'y U. S. Marshal.

Subscribed and sworn to before me, this 9th Sept. A. D. 1884.

[SEAL.] T. McC. HYMAN,
D'y Clerk U. S. Circuit Court, Eastern District of La.

Endorsed on cover: E. Louisiana C. C. U. S. No. 1100. Cornelius Gumbel, plaintiff in error, *vs.* John R. G. Pitkin, United States marshal, Kerbs & Spiess, L. Bamberger & Company, B. Dreyfous & Co., D. W. Stadeker & Company, *et al.* Filed 17th October, 1884.

Supreme Court of the United States, this 5th day of September, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] EDWARD C. BILLINGS, *Judge.*

170 (Endorsed:) R. United States circuit court. No. 10359. C. Gumbel, intervenor, plaintiff in error, *vs.* Kerbs & Spiess, defendants in error. Citation.

Marshal's Return.

Received Sep. 5, 1884, by the U. S. marshal, and on Sept. 8th, 1884, I served a true duplicate of this the original citation in error on Kerbs & Spiess, defendants in error herein, by delivering the same to E. T. Florance, Esq., att'y of record for said defendants in error, in person, in the city of New Orleans, eastern district of Louisiana, he accepting service in their behalf.

J. R. G. PITKIN,
U. S. Marshal, East. D'st of La.,
By E. S. CURRY,
D'y U. S. Marshal.

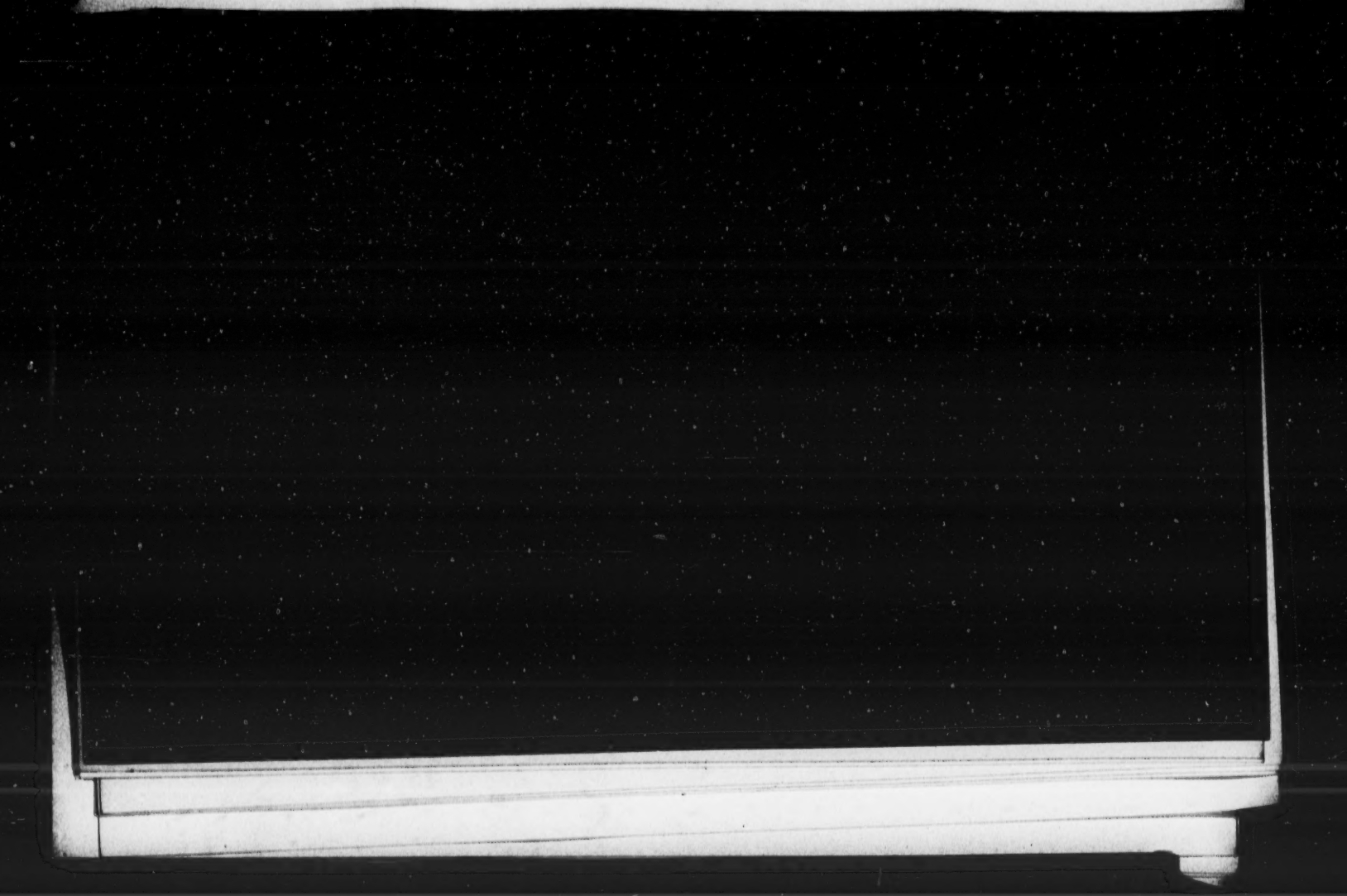
Personally appeared before me E. S. Curry, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true duplicate hereof, as set forth in his official return herein.

E. S. CURRY,
D'y U. S. Marshal.

Subscribed and sworn to before me, this 9th Sept. A. D. 1884.

[SEAL.] T. McC. HYMAN,
D'y Clerk U. S. Circuit Court, Eastern District of La.

Endorsed on cover: E. Louisiana C. C. U. S. No. 1100. Cornelius Gumbel, plaintiff in error, *vs.* John R. G. Pitkin, United States marshal, Kerbs & Spiess, L. Bamberger & Company, B. Dreyfous & Co., D. W. Stadeker & Company, *et al.* Filed 17th October, 1884.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 116.

CORNELIUS GUMBEL, PLAINTIFF IN ERROR,

vs.

JOHN R. G. PITKIN, U. S. MARSHAL,

KREBS & SPIESS, AND OTHERS, DEFENDANTS.

Brief for Plaintiff in Error.

To the Honorable the Judges of the Supreme Court of the United States:

This cause was before your Honors on "motion to dismiss and affirm," during October term, 1884. Both motions were denied and the issues involved in the "merits" are now to be considered. The opinion of the Court, delivered by Mr. Justice Miller, is reported at page 545, 113 U. S. Reports.

The proceedings instituted by C. Gumbel, plaintiff in error, would, in technical phraseology, under the *Code of Practice of Louisiana*, be denominated an "opposition or intervention" of a "third person." In *Appendix*, we cite the articles of said Code, with other statutory provisions, etc., defining such "opposition" with its object and effects. Similar procedures, with like purposes and effects, are known to every system of practice;

but we are thus, perhaps, unnecessarily minute and particular, in the course of this brief, to direct the attention of this court to every statutory provision of Louisiana law, bearing on the decisive issue in the cause, for the reason that we may find it necessary to show to your Honors that the learned Judge fell into error, when in his "*Statement of Facts and Opinion*" he proceeds on an assumption that there is no *statutory* provision in the laws of Louisiana, regulating the effects of conflicting seizures and more especially in cases of attachment. It is but just to him, however, to state that the special statute cited in the Appendix, Section 1942, Revised Statutes, had escaped attention and was not brought to his notice: though the points were urged that independent of such special statute the practice and jurisprudence of the State was well settled to the same effect.

STATEMENT OF THE CAUSE: FACTS AND PLEADINGS.

How plaintiff in error, C. Gumbel, a citizen of Louisiana, came into the Federal Court, your Honors have learned, when the cause was before you on the motion to dismiss, etc. His right to the remedy invoked, was also recognized and the substantial facts, by which his right to relief must be tested, briefly and as far as they go, accurately stated, We submit here, for convenience as well as to assist in recalling to your minds the history of the cause, that portion of the opinion *in extenso*, to-wit: from page 547:

"The record shows that a large number of the creditors of Joseph Dreyfus, of the City of New Orleans, sued him in the Circuit Court of the United States, and in those actions, or in one of them, a writ of attachment was issued and levied on the goods of Dreyfus by the marshal, who took possession of them.

"In this action, Gumbel intervened by petition, as he was authorized to do by the laws of Louisiana, and by the decision of this court, in Freeman vs. Howe, 24 How. 450, and alleged that a

seizure, under a writ of the State Court in his favor, had been made by the sheriff before the marshal's levy, and he claimed a priority of lien on those goods. The goods were sold under an order of the Circuit Court *pendente lite*, and the proceeds distributed to other parties, and Gumbel's intervention dismissed on the ground that the sheriff had made no seizure prior to that of the marshal."

This statement of the cause was sufficiently comprehensive for the purpose for which it was made: to decide whether or not there was presented in the record, a substantial issue which could not, in justice be disposed of, by the easy short cut of a motion to "affirm and dismiss."

For the purpose of argument on the "merits" a full and minute statement of the facts is necessary. We know that for these your Honors will look, and look only, to the official statement in the record. P. 48 *et seq.* See *Appendix*. But it may be of some service that we state them narratively, in natural sequence, taking care to make neither assertion nor inference not confirmed by the "statement" in the record.

The following is the history of this both novel and remarkable controversy:

Late in the evening, Saturday, October 27th, 1883, plaintiff in error, a citizen of Lonisiana, filed suit in the State court of proper jurisdiction, against Jos. Dreyfus, and obtained writs of attachment which were not, however, executed that night. As Jos. Dreyfus, defendant, too, was a citizen and resident of Louisiana, this was the only forum open to him. During the next following day, Sunday, various creditors, defendants in error, citizens of other States, obtained in the Circuit Court of the United States, writs of attachment against the same defendant, and the marshal of this district took, on the same day, Sunday, October 28th, possession of the defendant's store, and served notices of seizure on him. These "Sunday writs" were all

either abandoned or dismissed by the Court and no rights are asserted or claimed under them.

In the meantime, C. Gumbel, plaintiff in error, having knowledge of these events, instructed the sheriff of the State court to be prepared to make a seizure at the earliest possible moment after midnight, to-wit: on Monday morning, October 29th. At the stroke of twelve, midnight, he was on the spot for the purpose of effecting a seizure and taking possession of the contents of the store directed to be seized. He found the doors closed, the store in possession of a deputy marshal, who refused admission. The sheriff placed keepers on the outside of the building, at the front and rear openings, and generally did everything but resort to physical force to effect a seizure. At this time the marshal held no valid writ, and no writ which was not subsequently dismissed or annulled. The conduct of the marshal was a pre-arranged tour de force *to keep the sheriff out of possession until valid writs, signed at the house of the Circuit Judge, could reach his office. These "Monday writs," duly prepared, went out on orders signed as the last vibration of the midnight clock, fading away "met the confines of the coming day," and deputy marshals sallied forth to revive with them the the defunct sham of the "Sunday-seizure."*

In the meantime, Gumbel, apprehensive of just such conduct on the part of the seizing creditors, and the United States marshal, acting under instructions from them, *took the precaution to serve garnishment process on the marshal, Mr. Pitkin,* simultaneously with the proceedings to effect actual seizure. We copy from the "Statement of Facts:"

"*The sheriff placed keepers around the building, and guarded the same continuously down to the time of sale,* AND SERVED NOTICE OF SEIZURE AND SUBSEQUENTLY PROCESS OF GARNISHMENT UPON THE MARSHAL, IN CHARGE OF THE STORE, BEFORE SERVICE OF ANY OF THE MONDAY WRITS, *who had executed the process of attachment from this Court.*"

From these facts, the issues presented readily suggest themselves. But it may aid your Honors to a more perfect understanding of them to follow the developments by which what seemed at first an almost hopeless and unmanageable confusion was reduced to one clear and well-defined issue: the reason and necessity, why in the course of proceedings, the issues were somewhat changed, must also be made clear to this Court.

Gumbel had invoked the remedies and weapons of law, at his command; the executive officer of the court, the sheriff, did everything in his power but resort to an attack *vi et armis*, to seize the property of the defendant—and accepting per force, the fact that the Marshal held possession, served upon him, as the only mode of making seizure known to the law, after physical seizure, the process of garnishment accompanied by such notices as ordinarily effect seizure of the property of a debtor in the hands of "third parties." All his efforts were ignored by the Federal Court. He first invoked the aid of the State Court, as will appear by reference to his original petition of Intervention, printed record, page 14, that the sheriff's seizure might be made effectual. All efforts there failed, for the obvious reason that the judge of the State Court declined the issue tendered of a controversy with the United States Marshal and a conflict of jurisdiction with the Circuit Court, holding that that Court was competent to decide between the contending parties.

Then Gumbel filed his first petition in the Circuit Court—pages 12-15, printed Record. That petition and the relief sought, proceeded on assumptions of law that whatever effect might have been given to the possession of the Marshal, under the Sunday writs, as those writs were illegal and abandoned or dismissed, and the Sheriff was on the spot with deputies to take possession before any other writs reach the place or were even issued, that he had effected an actual seizure of the property, and that the State Court had acquired jurisdiction over it; that

accordingly, the marshal should have released his hold and delivered the property to the officer of that court, for final distribution. Pending this petition the United States Marshal under some of the writs in his hands, advertized the property in his possession for sale. A motion made in behalf of Gumbel that the sale be stayed, pending the issue made by him, was refused by the Circuit Judge. Record, page 17.

Submitting to the inevitable, Gumbel filed his "second supplemental Petition of Intervention and Third Opposition."—Record, page 23. In this petition, still asserting that actual seizure was made by the sheriff, recognizing the fact that the property had been sold and the only remaining tangible issue was the distribution of the proceeds; he alleges that the sheriff executed his writ and effected a seizure, by notice and garnishment on the marshal, before any writ or writs under which claims are now asserted came into his hands. He avers, that in the event it be held that the marshal made a valid and legal seizure, or if the Court held that it had possession, under such seizure for purposes of distribution in the *concursus*, "then and in that event" he pleads "that he is entitled to have his attachment recognized by this Honorable Court, and is entitled to share according to his rank in the distribution of the proceeds of the property; that the distribution of such proceeds must be made, according to the laws of this State, to the seizing creditors, according to priority of time of seizure; that in additlon to the efforts made and proceedings had in behalf of intervenor, the United States Marshal was served with interrogatories as garnishee, and in every legal and practical way or mode notified of the writ or writs held by the sheriff, and thereby a valid seizure was effected on petitioner's behalf to take rank according to the time at which it was executed.

"That at the time, as set forth in original petition of intervention, when the sheriff executed the writ, no valid writs were

in the possession of the marshal, for the reasons set forth in said original; and even if valid, said writs in the suit set forth in said original petition have all been abandoned, discontinued or set aside by judgment in this Honorable Court; and petitioner in intervention, is therefore entitled, as first in rank, in point of time, of valid seizure, to be paid in preference to all other attaching creditors.

"Wherefore, he prays that this second supplemental petition of intervention and third opposition, be filed; that all parties be served therewith, and after due proceedings, for judgment as in the original and first supplemental petition prayed; or if it should be held that the marshal's possession, under the circumstances, excluded any possession and control of said property by the sheriff and the Civil District Court of this parish, and that this Honorable Court has jurisdiction over the *res*, then he prays that his attachment, obtained as set forth, be recognized that he be permitted to participate in the distribution of the proceeds, and accordingly that (he) be paid out of the proceeds of sale in preference to all other attaching creditors subsequent in rank to his own, and for general relief, etc."

ARGUMENT.

On the issues thus made up and submitted to the court, argument took wide range, and a mass of learning was displayed on the questions of conflict of jurisdiction, and especially the inviolable exclusiveness of the machinery of the Federal Court. It was contended that Gumbel had not only not made a seizure, actual or by notice, but that such a thing as the assertion of any rights based on proceedings in a State, on property in the possession of the Federal Court, was both physically and theoretically impossible. It was argued and held that the Federal Court in this instance, at least surrounds itself with an impassable barrier, encloses within its ramparts the property of Joseph Dreyfus, and disposes of it for the benefit of the favored few to

whom the portals are opened, because of their citizenship in another state, while the "resident" creditor is beaten back like a foreign enemy, though the laws of the state proclaim "that the property of the debtor is the common pledge of *all* his creditors," and the court accepted and applied this doctrine. It held, "that the sheriff had made no actual seizure; and *second*, that "when property susceptible of manual delivery has been "seized, and is held by the officer of and under process from "the court of due jurisdiction, it is incapable to be subjected to "seizure by another officer of and under process from the court "of another jurisdiction." (Opinion, printed Record, page 49, see Appendix) Before stating, formally, our proposition, might we not, right here, safely admit the general truth of these conclusions, and yet contend that they do not exclude Gumbel from participating in the proceeds? The first proposition establishes the conclusion that the marshal had seized the property; the second, that as a consequence, the court under whose writ he did so, acquires by that fact, jurisdiction over that property which no other court, high or low can impair or defeat; *but it does not follow that, the court having such jurisdiction over the property seized, in such court no rights could be recognized in and to the property under its control, except such as result from the execution of the writ which secured its dominion.*

In the judgment or decree itself. Record, page 56, Gumbel's Intervention is "dismissed for the reason that the sheriff under the writ of the intervenors made no levy, and therefore, has no privilege upon the fund."

The intervenor was therefore admitted to a hearing, but the fact was found against him, or rather from the fact, the court concluded that there was no levy under his writ, and therefore, he could maintain no rights against the property or its proceeds. In this we contend the court erred. We endeavored to correct the error on rule for new trial, but failed. This rule—Record,

page 532, contained also in *Appendix*—sets forth the position of plaintiff in error in detail, showing our reliance on the service of garnishment process, and notice of seizure on the marshal.

On this our contention, and our hopes rest. While what constitutes an "*actual seizure*," as a mixed question of law and fact, may still be open for discussion, the physical fact remains that the marshal had and kept *possession*, until the property was sold by order of the court under whose writ he held. We are perforce, reduced to the claim on the proceeds, waging the battle, not of the sheriff and State Court, as against marshal and Federal Court, but of C. Gumbel, the Intervenor, claiming from the court a fund in its hands, as against other individual claimants; and we only ask that his rights be tested and adjudged not according to abstract principles of jurisdiction and power, as between different courts asserting their respective authority as against each other, over a particular subject matter, but according to the principles which govern the administration of law and dispensing of equal justice between the individual suitors who are before the court.

We respectfully submitted to the Circuit Court, and now urge before your Honors, that for the purpose of administering the attachment laws of the State, for the benefit of creditors, against a common debtor, who was insolvent, and all of whose property was attached, the Federal and State Courts were in a measure, courts of concurrent jurisdiction. The suits, the procedure, the conditions and effects of the issuance of the writ of attachment; the nature of the cause of action, and the law governing their maintenance and results, are identical in State and Federal Court; the only feature of difference is that the citizens of the State of New York, for example, had the option to apply, and did apply to the Federal Court, by reason of his citizenship only, while the citizen of Louisiana, must be content with the aid of his own State's Court. In such event each

court retains its jurisdiction, as between the plaintiff and defendant, but the court, whose officer first seizes, must distribute it among the various claimants, and this great final tribunal is asked, to say that according to the law of the land when the Federal Court holds property of a defendant under writ of attachment, no one who could not by original suit invoke its power, can make claim or assert any right against that property.

We assume, in the first place, that this court will take a liberal view of this question; and while it may justly guard with rigorous rule the jurisdiction of the Federal Court, as against interference from other tribunals, we believe it will hold that that jurisdiction shall be so exercised that no private rights may suffer irreparable loss, and that justice be not profaned by suffering such wrong to be done in her name.

As far as our research and our knowledge go, this precise issue has never been decided by this court. It was, however, before the Circuit Court of the United States, for the Western District of Missouri, in identical form, and that court gave to our creditor whose writ issued from the State Court, and was *levied by garnishment process on the marshal*, as in the present controversy, rank according to the time of his levy. It was the case of *Bates and others vs. Days*, XVII Federal Reporter, 167. We furnish the court in the *Appendix*, the full text of decision, and present now only a statement of it to keep the connection of the argument.

In that case, "under writs of attachment," the marshal had seized certain property of the defendant. A subsequent writ of attachment issued from a State Court, executed by notice of seizure and garnishment process on the United States Marshal. A *third* writ was issued from the Circuit Court, and the proceeds being insufficient to satisfy the three writs, a controversy arose between the last attaching creditor, in the Federal Court, and the plaintiff in attachment from the State Court. There, as in

this case, it was contested that the suitor in the State Court could acquire no rights against property in the possession of the Federal Court. Berkel, C. J., affirmed on motion for rehearing by McCrary, Circuit Judge, gave the writ from the State Court rank and recognition, according to the time and order of it issuance and execution by service of garnishment process on the Marshal.

This conclusion was reached, as the opinions of the learned judges will show, on the facts of the case as an original question. In support of it, however, reference was made to a decision of the Supreme Court of the State of Missouri, in the case of Patterson vs. Stephenson, decided in April term, 1883, at that time not reported, now found at page 331, 77 Missouri Reports. To accept the complete application of that case to the present it need only be premised, that in regard to the fundamental rule of jurisdiction, the same principle obtains as between a Justice of the Peace and another court, as between the most exalted courts in the land. The Justice's Jurisdiction, once fixed, cannot more be interfered with than that of the Circuit Court of the United States.

In that case the constable, executive officer of a justice of the peace court, had seized under a writ of attachment, issued by said justice, the stock of goods of one Stephenson. Afterwards Patterson, who became plaintiff in error to the Supreme Court, sued out writs of attachment in the Circuit Court (State circuit) of the county, and "the sheriff undertook to execute on the same goods." (The words in " * * " are literally from the decision). He found the constable in possession. "The constable without yielding his possession, in conjunction with the sheriff proceeded * * * to invoice the goods, each presenting a list." Subsequently, other suits were filed in the Justice's Court and the contention was that the sheriff had made no levy under Patterson's writ and he could make no claim be-

cause the Justice Court's possession of the property made all interference, founded on writs from other courts, impossible. A contention identical with that under consideration. The Court, in a lengthy and well reasoned opinion, every word of which is an argument in this cause, found otherwise. We quote from the body of the decision the following portion exactly in point:

"The counsel for defendants in error contends with much plausibility, that when the plaintiffs sued out their writ, the property being *pro forma* in the constable's hands, under an antecedent writ, was already in *custodia legis*, and, therefore, the sheriff could not legally execute his writ on this property. This argument rests on the postulate that the execution of the writ of attachment is an actual seizure, a caption of the property; and, therefore, another jurisdiction and another officer cannot interfere, by a second writ, without disturbing the prior custody and possibly breaking the peace and producing conflict, confusion and disorder.

"The strict logic of this rule would enforce the conclusion that one officer under a competent writ has seized the property, it is, until the satisfaction of the debt for which the seizure was made, actually withdrawn from the operation of any subsequent writ, even in the hands of the same officer. Literally adhered to, there could be no qualified, simulated or equivalent execution of a second writ. And yet text writers and courts, singularly enough, while denying the right of the imposition of a second writ of attachment from another court, by another officer, on the property already attached, held, nevertheless, that the officer first attaching may lay any number of succeeding writs on the property already seized by him, and after satisfying the first writ may apply any resdue of the attached property to the remaining debts in their order; and it is also held that separate writs from different jurisdictions may simultaneously be levied on the same property by different officers, so that nei-

ther will acquire a priority, but a joint custody." Drake on Attach. Sections 263, 265, 269 and authorities cited.

"On principle and reason the validity of successive levies by the same officers on the same property is a recognition of the practical fact that there may be, after a taking into custody of the law the property of the debtor, an effectual imposition of another writ without an actual caption, or a taking away of the property, or an appropriation of it for the time being, to the attaching creditor's claim. It is held in such case that the second writ in the hands of the same officer is executed by him, *sub mode*, so "it will be available to hold the suplus after satisfying the previous attachment, or the whole of that (the first) attachment should be dissolved. In such case no overt act on the part of the officer is necessary to effect the second levy, but a return of it on the writ will be sufficient. So, where the property is in the hands of the bailee, the officer who placed it there may make another attachment, without the necessity of an actual seizure, by making return thereof, and giving notice to the bailee." Drake on Attach., Section 269. In *Tomlinson vs. Collins*, 20 Conn., 364, it is held in such case that the second attachment is valid even without any notice to the bailee."

"Evidently the making of a second levy by the same officer is recognized because it does not disturb his custody of the property. If the rule which prevents one officer from levying on goods seized by another officer, rests mainly on the prevention of conflict of jurisdiction and the interference of one officer with the prior custodianship of another, then, on the maxim, *cessante ratione legis, cessat ipsa lex*, I can see no reason for the operation or recognition of the rule, where the second levy does not produce such conflict or interference. For it must be borne in mind that the other requirement of the law, that the levying of an attachment is an actual seizure of the

property, is satisfied in the case of successive levies by the same officer, by a constructive application of the succeeding writ "to the suplus after satisfying the previous attachment." Why, then, was not the act of the sheriff in the case now under consideration, in taking the invoice of the goods in connection with the constable, "available to hold the surplus after satisfying the previous attachment," made by the constable? The constable had the requisite notice. It in nowise inrerfered with the prior custody. It produced no conflict, and would lead to no confusion."

So, had the marshal "notice" of Gumbel's writ, and no conflict, interruption, or disturbing interference resulted. It only made for the court, whose officer had the property, the duty to decide for him the rights of various claimants.

We pray now the particular attention to the fact that the soundness of these decisions was not called in question by the Circuit Judge, but they were held to have been rendered on statutory provisions of Missouri law, and inapplicable because the law of Louisiana has no such statutes. In all other respects the issue is fairly and clearly stated; but we show by the statutory law furnished in *Appendix* that the learned judge committed an inadvertent error, for which we take our share of the blame, as we did not specially bring the statute to his attention. He says:

"It disposes of this part of the case to say, that the sheriff "made no seizure, no caption of the property; its possession "was withheld from him and access to it was forcibly denied "him. Whether this was done under color of a good or bad "writ, or without any writ, all seizure was prevented and no "lien was affected. *This would end the case of the intervenor as "to any privilege upon the fund, unless he can maintain that the "marshal, holding under color of a writ from this court, can be made "to hold also under a writ from the State court subsequently served "by the garnishment.*

"The authorities for this proposition cited are Patterson "vs, Stephenson, unreported (since reported, as cited above,) "decided by the Supreme Court of Missouri, April term, 1883, "and Bates vs. Days, 17 Federal Reporter, 167. *Those cases are "put by the courts, which decided them upon a statute* of Missouri, "which was deemed to have been adopted by the practice Act "of Congress, regulating the procedure in the Federal courts. "In Louisiana we have no such statute, and there is, therefore, "no need to discuss the question, as what would be the legal "consequences if one existed."

And the learned judge proceeds to say that "in this State "the courts are to be guided by the doctrine which is settled "by the cases in Hagan vs. Lucas, 10 Peters, 400; Taylor vs. "Carryl, 20 Howard, 583, to the effect that when property sus- "ceptible of manual delivery has been seized and is held by the "officers of, and under process from the court of, one jurisdic- "tion, it is incapable to be subjected to seizure by another "officer of and under process from the court of another juris- "diction. The authorities are collated in Wilmer vs. Atlanta "and Richmond Air Line R. R. Co., 2 Wood's, pp. 427 and "428."

We respectfully submit that, even on general principles, the decisions referred to do not support the conclusion adverse to Gumbel's pretension. They assert and maintain only the doctrine that there cannot be *two possessions*. The language in 10th Peters, we admit, is very sweeping, but, clearly, the court only decided that property seized and held by the officer of one court could not be seized and taken by the officer of another court. The case in 20th Howard, page 583, is clearly to that effect only, and by referring in that case to the case in 10th Peters, this court merely emphasized its conclusion that while property was in the custody of one court it could not be taken into the custody of another. In Buck vs. Colbath, 3 Wallace,

335, this court interpreted its own decision, in a case involving a similar issue—Freeman vs. How, 24 Howard, 540—saying that it decided only "that property held by the marshal, under a writ from the Federal court, could not be lawfully taken from his possession by any process issuing from a State court, *and nothing more.*"

In the case in 2 Wood's, 427 and 428, in which it is said the authorities are collated, nothing is held applicable to this case except the almost general proposition that property in the possession of a receiver, appointed by the State, could not, and if it could, should not be taken out of his possession by order of the Federal Court, unless there were "special circumstances" in the case, "taking it out of the ordinary rule." Mr. Justice Bradley rendered this decision, and among other things, lays down the proposition: "It is too well settled to admit of controversy, that when two courts have concurrent jurisdiction of a subject of controversy, the Court which first assumes jurisdiction has it exclusive of the other."

So, we respectfully submit, irrespective of what the statute law of Louisiana may be, that the decision and the established jurisprudence urged against the appeals of plaintiff in error, have only recognized and applied the doctrine that there can not be *adverse possession* or *custody*; the thing is self-evident, it could be reduced to the form of an axiomatic truth. If such conflicts were permitted, who would settle and adjust them? Each court represents the power of the land: the State, no less than the Federal Court has behind its dignity and behest, the power of the whole nation to enforce its decrees: the State's primarily; the nation's, if the State is inadequate in power. Where could the final arbitrator come from?

But never yet, as far as we could learn, has it been held that a Court, say a Federal Court, seized of jurisdiction, over property in its control, could not, or would not, hear a

claimant asserting rights upon such property, based on legal proceedings in another court.

The case at bar presents, a radical, almost self-evident feature of difference, from those cited by the Circuit Judge; a feature so clearly defined in the Bates and Patterson cases that we fear to exhaust the patience of your Honors by further repetitions.

It remains only to call your Honors' attention to the statute laws of Louisiana, to show, not only that such statutes were in force, but that they are, if possible, more explicit than the law of Missouri.

We have collated in the *Appendix* the articles of the Code of Practice on "Third Oppositions." These, in themselves, reinforced by the settled jurisprudence of the State, that the court which issued the process on which the property first came in its custody must distribute it, are sufficient to show the practice in the Louisiana courts. In addition to thosecited, we submit the following:

Article 723, C. P. "When several successive seizures are "made of the same property, the creditors making them are "entitled to a preference over other ordinary creditors, accord-"ing to the order of their seizures."

Then, as if all this was not sufficient, the Legislature enacted the special statute, set opposite that of the State of Missouri, which, at least, completely establishes the identity of issue between this and the causes cited from the Federal Circuit and State Supreme Court of Missouri.

This statute (see Appendix), though not so long in words, is as comprehensive in spirit as that of Missouri. It refers all cases of conflicting privileges upon property to the court "by whose mandate the property was first seized, either in *mesne process* or an execution."

To anticipate a possible objection, we desire to call attention to the signification of the word "privilege." In its strict technical meaning it is equivalent to the common-law term "lien;" but it is also used to express the "right of preference or priority," which an attaching creditor acquires over those who attach after him. That this meaning of the term is embraced in its use, in this statute, is confirmed, if confirmation were necessary, by the phrase *mesne process.*

We submit, that these laws, under the Practice Act of Congress constitute, as was held in the Bates case, a part of the law of attachment, to be recognized and enforced by the U. S. Circuit Court.

We ask your Honors, further, in reviewing this question of conflict of jurisdictions, if it is involved at all, to bear in mind that the rights asserted upon the proceeds of the attached property, by all parties to this record, are of the same nature and origin. No one claims any special privilege or right of ownership or claim *in rem.* All claims asserted are based on attachment suits, the only difference being that all attached in the Federal Court, except the plaintiff in error, whose "luckless fate," it is to share with the defendant, Dreyfus, the distinction of being a citizen of Louisiana.

Of the remarkable proceeding by which the defendants in error, obtained the benefit of the marshal's "possession," little need be said; the less the better. The marshal, perhaps, is justifiable; he acted under writs of the Circuit Court. The Circuit Court having jurisdiction in the suits, it was not for him to decide that such writs should not have issued on Sunday. He might have had the regard for the "uncertainty" of law, which the constable had in the Missouri case, and given the sheriff a chance. Surely, the sheriff did not come as an enemy or an interloper; he had his duty to perform; and he performed it, as well as the marshal would permit him. The

marshal held the property under color of these writs when the sheriff appeared, and failing in his demand for the property, the latter served the notice of the writ he held with garnishment process on the marshal. The defendants in error, well knowing that they had nothing under the Sunday writs, held on to their illegal and violent possession until the Monday writs could be executed. Does not a grave and earnest question arise here, whether it is right, not to say decent, that these creditors whose first possession was *illegal* should be permitted to derive any advantage from their palpable abuse of legal remedy. We will not impose further on your Honor's time by an argument on the "ethics" of such a condition of things, but we do wish to show your Honors that in somewhat similar situations, the Supreme Court of Louisiana, in several instances, rebuked such unbecoming stratagems by depriving the culprit of the advantage sought to be attained. In Gilbert vs. Hollinger, 14 A. 141, it was held that "property brought wrongfully within reach of the process of our courts, cannot serve as the basis of an attachment, which, were the property otherwise within their jurisdiction, would be sustained. The fact in this case was as stated by the court: "Plaintiff, "who, as well as defendant, was a citizen of Alabama, falsely "swearing that the latter was a citizen of Louisiana, sued him "here in the Federal Court, and under an attachment of his "property in a county parish, brought it to New Orleans. "Once there, the suit in the Federal Court was dismissed, and "simultaneously an attachment, based upon the truthful alle-"gations of defendant's non-residence, was sued out against the "property in one of the State Courts. *Held*, that the suit must "be dismissed." And in the case of *Paradise vs. Farmer's Bank*, 5 Ann., 710, it was held. "property fraudently or forcibly withdrawn and brought to this, from a sister state, a competent court of which has issued some order relative thereto, is not liable here to attachment, so as to defeat rights acquired by

virtue of the previous order. The prompt restitution of the property will be ordered, or such decree entered, as will prevent any right being acquired by such fraudulent attempts."

Whatever force or application this court may accord to the principles here laid down, in the present cause, you cannot but admit their equity and propriety. They show a most delicate sensitiveness on the part of our court, not to impede or thwart the work of another jurisdiction, and a quick and effectual rebuke to any improper schemes in which the machinery of the courts is resorted to, as an instrument of wrong or injustice.

With such principles to guide them, can it be doubted, if the situation had been reversed, that the State court would have hesitated a moment to direct its sheriff to release the property, and recognize the seizure and custody of the United States marshal? And is it too much to expect that the Federal tribunals will show the same regard for the sister State courts, especially within the limits of substantially *concurrent* jurisdiction?

We submit, therefore, in retrospective review:

I. That the property, in kind, should have been delivered to the sheriff of the State court, and jurisdiction over it transferred by the circuit court to the State court. This is now physically impossible, but plaintiff in error exhausted all remedies, as the record shows, to obtain that result, before the property was sold. *A fortiori* should the proceeds be allowed to the satisfaction of his writ.

II. At all events, the notice of seizure and garnishment process served on the marshal, in possession, after ineffectual efforts by the sheriff to a bodily seizure, must be held valid notice of a valid attachment issued from a competent court of, *ad hoc*, concurrent jurisdiction, and allowed to enure to the benefit of the suing creditor, according to the rank of his

attachment, which must be determined by the time same was executed, in the manner set forth.

III. As all writs of attachment under which the marshal held the property when the notices of Gumbel's attachment were served have either been abandoned or dismissed, his attachment became first in rank, and he should have been decreed entitled to be paid the amount of his claim in preference to each and every one of the defendants in error.

And we pray accordingly.

Most respectfully submitted.

CHAS. F. BUCK,
GEO. H. BRAUGHN,
For Plaintiff in Error.

APPENDIX.

Articles of Code of Practice on "Opposition of Third Persons."

Art. 395. "This opposition is a demand brought by a third person, not originally a party in the suit, for the purpose of arresting the execution of an order of seizure or judgment rendered in such suit, or to regulate the effect of such seizure in what relates to him."

Art. 396. "Such opposition may take place in two cases:

1. When the third person making the opposition pretends to be the owner of a thing which has been seized.

2. When he contends that he has a privilege on the proceeds of the thing seized and sold."

Art. 397. "This opposition must be made before the court which has granted the order of seizure or the judgment, in virtue of which the provisional seizure has been effected."

Art. 401. "If, on the contrary, the opposition be made on the ground that the third opponent has a privilege which entitles him to be paid in preference to the party making the seizure out of the proceeds of the sale of the property seized, as when there are several seizures or conflicting claims on the same property; such opposition may be made by motion, of which due notice must be given both to the party who has made the seizure and to the sheriff; and the court, without requiring any security from the third opponent, shall direct the sheriff to retain in his hands, subject to their further order, the proceeds of the sale."

Statute of Missouri, etc., cited in Bates and others vs. Days.

"Where the same property is attached in several actions, by different plaintiffs against the same defendant, the court may settle and determine all controversies which may arise between any of the plaintiffs in relation to the property, and priority, validity, good faith and effect of the different attachments, and may dissolve any attachment, partially or wholly, or postpone it to another, or make such order in the premises as right and justice may require."

Statute of Louisiana on same subject, being Sec. 37. Act No. 341, Acts of 1855, page 491, re-enacted as Section 1942, "Revised Statutes of 1870."

Section 1942. "Whenever a conflict of privileges arises between creditors, all the suits and claims shall be transferred to the court, by whose mandate the property was first seized, either in *mesne process* or on execution, and the said court shall proceed to class the privileges and mortgages according to their rank and privilege, in a summary manner, after notifying the parties interested."

(N. B.—This statute had escaped attention and was not cited to the learned judge *a quo*. It was argued, however, that, independent of such statute, the law and jurisprudence of the State, regulating the distribution of property under conflicting seizures, was, in theory and practice, in accord with the Missouri statute applied by the Federal Judges in the Bates-Days case,)

Opinion and Statement of Facts.

(Printed Transcript, pages 49 *et seq.*)

"These cases are submitted together with reference to the distribution of the proceeds of property seized under attachment. The questions are as to the claim of a creditor under an attachment from the State court, and as to the order of priority of creditors obtaining attachments in this court.

"Various creditors had obtained attachments on Sunday in this court, which were also levied on Sunday. The same, and other creditors, obtained attachments in several suits also in this court, some early Monday morning, shortly after midnight, and others between 8 and 10 o'clock, a. m., which were also levied upon the same property.

"The intervenor had obtained his writ from the State court on Saturday. Early Monday morning, shortly after midnight, and while the marshal was holding possession of the property, under the Sunday writ alone, the sheriff came to the store where the property was situated for the purpose of serving the writ and demanded entrance, which the marshal refused. The sheriff placed his keepers around the building and guarded the same continuously down to the time of the sale, and served notice of seizure and subsequently process of garnishment upon th6 marshal in charge of the store, before the service of any of the Monday writs, who had executed the process of attachment from this court The marshal preserved his possession without interruption from the moment of seizure down to the time he sold the property under the Monday writs, the Sunday writs having been abandoned. The property seized was the wines and brandies, etc., the stock of a wholesale liquor store.

his is the first. As a proposition of law, it is indisputable that when a plaintiff has unlawfully obtained possession of a debtor's property, for the purpose of levying process upon it, such levy is wrongful and cannot be upheld as against one who is so situated that he can urge its invalidity. Wells vs. Gurney, 8; Barnes vs. Cress, 769; Isley vs. Nichols, 12 Pick., 270, and Closson vs. Morrison, 47 New Hampshire, 482. If this was a suit brought by the debtor against the officer, or if the creditor who attempted to attach through the sheriff had been able to acquire any lien upon the property sought to be reached, then the objection could be urged. But it cannot avail as presented by this creditor; for either the Sunday plaintiffs did not detain unlawfully, and did not thereby obtain a week day seizure, or else the party here urging the objection is endeavoring equally to profit by the detention. It is as if plaintiff had brought property within a jurisdiction and then seized, and subsequently a second plaintiff had obtained and levied process and sought to establish priority by urging against the first plaintiff the wrongful importation. The answer would be that the illegality furnished the opportunity for both seizures, and neither plaintiff could urge it against the other. Until some party presents a case whose title, independent of the detention, the court can be governed only by the order in which the levies were made.

"The seizure of Corning & Co., No. 10,354, therefore ranks first. Next, and as simultaneous seizures must rank these in Krebs & Spiess, Maddox, Hobart & Co., T. Altsheed & Co., B. Dryfus & Co., Hoffheimer & Co., Wm. Adler, and Calmer Lazard.

"And, after these, as well as that of Elias Block, the seizure of H. Weiller & Co., which were effected subsequently, viz: at 10:35 of Monday morning. Since the proceeds will more than satisfy the judgment in the case of the first seizure, and will not satisfy the judgments of those cases of simultaneous seizures, the costs must first be paid; second, the judgment to Corning & Co., and the residue must be divided pro rata among Krebs & Spiess, Maddox, Hobart & Co., T. Altsheed & Co., B. Dreyfus & Co., Hoffheimer & Co., William Adler, and Calmer Lazard, according to the amount of their respective judgments, and let the matter be referred to E. R. Hunt, commissioner, to make the tableau of distribution.

"The foregoing is the statement of facts and my conclusions of law derived from them in this cause, the jury having been waived.

"(Signed). EDWARD C. BILLINGS,
Judge."

Rule for New Trial.

(Printed transcript, pages *et seq.*)

"On motion of Braughn, Buck, and Dinkelspiel and A. H. Leonard and Morris Marks, counsel for C. Gumbel, intervenor and third opponent, it is ordered that all parties to the judgment herein rendered on Tuesday, April 1st, and in interest herein, show cause on Saturday, the 5th day of April, 1884, at 11 o'clock a. m., why the said judgment should not be set aside and a new trial granted for the reasons, to-wit:

"1st. That said judgment is contrary to law and evidence, especially in this, that the court erred in not admitting the validity of the seizure made in behalf of C. Gumbel, on Monday morning, October the 29th, 1883, in this further, that said seizure, having been effected at a time before any writs of attachment, under which rights of preference are claimed herein, were placed in the hands of the marshal of the court, entitled mover to payment out of the proceeds in preference to any other attaching creditors herein, and the court erred in refusing so to decide; in this further, that (the) court erred in holding that there is or was any substantial difference in the laws regulating the effect of seizures by attachment; that the jurisprudence of the State on said subject, as settled by the decisions of the Supreme Court, is identical with that of the State of Missouri as fixed by statute, and such jurisprudence as part of the law on attachments is as much within the scope and contemplation of the Act of Congress as if same were expressed in a legislative enactment.

"2d. That the court erred in refusing to hold and decide that the demand upon the marshal herein by the civil sheriff, notice served, and the process of garnishment on said marshal, constituted a valid seizure.

"3d. That the possession of the marshal of this court, though under the Sunday writs, was a possession under color of law, could not physically be disturbed by the sheriff of the civil district court, and the demand, notices and garnishment aforesaid, fixed the rights of mover as attaching creditor, and entitled him to share in the distribution herein, his rights to be determined according to the time at which the said acts of seizure were done.

"4th. The jury having been waived, the Court should, before rendering judgment, have made a specific finding of the facts, and so far as the reasons for judgment recites the facts, or purport to recite the facts proved in the case, same is incomplete in not stating all the material facts, and a serious error is contained therein, to wit, in the statement that the garnishment process of C. Gumbel was served on the deputy marshal, whereas

the fact is that it was served on the marshal, and at a time prior to that at which the attachments opposed to mover were placed in the hands of the marshal.

"Motion refused May 19th and judgment signed May 20th, 1884." Printed Record, pp. 55–7.

Opinion of Judge Krekel in the case of Bates et al. vs. Days.

Circuit Court W. D. of Missouri.

Reported page 167, Vol, XVII, Federal Reporter.

Bates, a citizen of New York, sued Days, a citizen of Macon City, Macon county, in the State of Missouri, by attachment, on a claim amounting to $3,800, and the United States Marshal, on the 20th day of March, 1882, under a writ, seized a stock of goods, books, notes, and accounts, valued at $12,000, as the property of Days. On the day of the seizure, one Rubey, a citizen of the State of Missouri, as assignee of the Macon City Savings Bank, sued out an attachment in the State court against Days on a claim of the Bank for $3,500, and the sheriff of Macon county, to whom the writ was directed, undertook to levy the attachment on the property seized by, and in the actual possession of, the United States marshal. In his return the sheriff states that he levied the attachment on the stock of goods of Days, subject to the attachment of Bates in the United States court, and that he notified the marshal of the attachment and levy, and that he summoned him as garnishee. Some days after the levy by the sheriff, Hemphill and Bailey, two non-residents of the State of Missouri, sued out an attachment each against Days in this court, and the United States marshal levied the same on the goods which he had seized on the attachment of Bates. The property attached was sold under an order of this court, and about $8,000 realized. The first attachment of Bates, amounting, with costs, to about $4,000, has been paid. There remains in the registry of the court the balance of proceeds, which is claimed by Rubey under his attachment, and by Hemphill and Bailey on their attachments. These adverse claims are the matter in controversy.

The difficulty grows out of the construction of the act of Congress regarding attachments, and the application of its provisions to the State laws on the same subject. The laws of Missouri make provision for two or more attachments issuing out of the same or co-ordinate courts in the State, but are silent as to attachments in United States courts. Rubey, assuming that the State attachment laws prevailed in them, heretofore moved this court for an order directing a transfer of the cases from this to the State court, to have them determined under the State law. This application was denied, because non-residents of the State are entitled to have their controversies determined in the Federal courts. Rubey thereupon applied to be made a party to the proceedings in this court, so as to enable him to assert his rights. Leave was granted. Hemphill and Bailey, though later than Rubey in time with their attachments, yet

claim the proceeds in controversy, because they say Rubey has no standing in this court. This depends upon the construction given to the Federal and State attachment laws. And first of the provisions of the Federal statute:

Section 915 provides: "In common-law cases in the circuit and district courts the plaintiff shall be entitled to similar remedies by attachment or other process against the property of defendant which are now provided by the laws of the State in which such court is held for the courts thereof." All other provisions regarding attachments, found in the United States Statutes, pertain to exceptions or limitations, or look to the effective enforcement of State attachment laws. The remedies in the United States courts, under the provisions cited, are to be similar to those provided for the courts of the State. What are the remedies provided by the laws of the State of Missouri in cases such as the present? Section 447 of the statutes of Missouri is as follows:

"Where the same property is attached in several actions by different plaintiffs against the same defendant, the court may settle and determine all controversies which may arise between any of the plaintiffs in relation to the property, and the priority, validity, good faith, and effect of the different attachments, and may dissolve any attachment, partially or wholly, or postpone it to another, or make such order in the premises as right and justice may require.

If the writs issue from different courts of co-ordinate jurisdiction, such controversies shall be determined by that court in which the first writ of attachment was issued.

Under the provisions of the laws of the United States cited, this court administers the laws of the State of Missouri regarding attachments. That law, as is shown in the provision cited, has amply provided for the case in hand, which requires the determination of the property between Rubey, Hemphill, and Bailey. That Rubey, with his attachment in the State court, was prior in time to Hemphill and Bailey, is not disputed. But it is said that Days' property was in the hands of the United States marshal—in other words, in the hands of the law—and therefore could not be attached. This is true, if, by attaching in a case like this, is meant the actual seizing of possession of the property and the taking it out of the hands of the officer. In this case such seizure was unnecessary, for the property, as stated, was in the hands of the law. Yet something indicating the assertion of this right must be done by Rubey in order to entitle him to a lien or claim on the property and give him standing in this court. Rubey being a citizen of the State of Missouri, could not sue Days in the Federal court, because both were citizens of the same State. He was remediless unless the courts of the State afforded him redress. The attachment law did this, and upon suing out the writ and caus-

ing the same to be levied, and notifying the United States marshal, as he did, it gave him a lien on the surplus and a standing in this court such as enabled him to assert his rights, which he did in due time. Though the marshal's return shows that he made additional levies in the Hemphill and Bailey cases on the same goods he had seized under the attachment in favor of Bates, yet it is apprehended that if he had returned the second and third—the Hemphill and Bailey writs—with the indorsement that since the seizure under the Bates attachment additional writs of Hemphill and Bailey against the same property had come into his hands, and that he held the property subject to these several attachments, such a return would undoubtedly have been good. The executive officers of courts should understand that when writs issue from State and Federal courts against the same property, the officer first obtaining possession, on being notified that a State court officer, as in this case, has a writ against the same properiy, all reasonable facilities should be offered such officer to make a full return, and the officer holding the property should show in his return whatever was done by such State court officer. Federal and State courts are not foreign courts, or in hostility to each other, in administering justice between litigants. The citizen of the State in the Federal court is as much in his own court as in the courts of the State. The rights he has he cannot be deprived of in a Federal court. The citizen of another State has the same claim to a debtor's property in the State of Missouri as a resident, but no more. In the case before the court, Rubey, being prior in time with his attachment to Hemphill and Bailey, is prior in right.

Attachments of State courts are valid and binding in Federal courts, and their priorities are to be ascertained under the laws of the State, where no Federal law interferes.

It might well be that the levy, as shown by the return of the sheriff, is good under the fifth subdivision of section 418 of the statute of Missouri, which provides "that when goods and chattels, money or evidences of debt, are to be attached, the officers shall take the same and keep them in his custody, if accessible; and if not accessible, he shall declare to the person in possession thereof that he attaches the same in his hands, and summon such person as garnishee:" No stress, however, is laid on this provision preferring the placing of the decision on the broader view of the law as stated.

The authorities cited for the non-resident claimants as to the necessity of an actual seizure to make a valid levy, and the want of such, as well as the insufficiency and illegality of garnishing an officer, are not in point. The property being once in the possession of the law, the court determines the rights of the parties before it having claims thereto. The judgment is in favor of Rubey for the balance in the registry of the court.

Opinion of McCrary, C. J., in same cause, on Motion for Rehearing.

Section 447 of the Revised Statutes of Missouri makes careful provision for the adjustment of all questions growing out of the levy of several writs of attachment issued from the same or from different courts upon the same property. The question here is; does it apply to a case where some of the writs issue from a State court and others from a Federal court? I am clearly of the opinion that it does. The United States has no attachment law of its own, but its courts are required to administer the remedies by attachment which are provided by the law of the State in which such courts are held. Rev. St. § 915.

We must administer the attachment laws of the State as we find them, and so as to afford to suitors in the Federal courts the same remedies afforded to suitors in the State courts; neither more nor less. To exclude the section above named from the attachment law of Missouri, which we are to enforce in the Federal courts within that State, would be to favor the non-resident creditor, who can sue in this forum, by giving him an unfair advantage over the resident creditor who must sue in the State court, and who must, of course, abide by that statute. It may be true, as contended by counsel for plaintiffs, that there are difficulties in the way of of the enforcement of this statute in the Federal courts; but they are not insurmountable. If they were, the result would probably be to deprive this court of jurisdiction in attachment cases. If this court cannot administer the remedies by attachment according to the statute of the State, and afford to suitors *all* the remedies provided by those statutes, it may be doubtful, to say the least, whether it ought to entertain a suit by attachment at all.

The provisions of the attachment law of Missouri providing a mode whereby questions of priority may be determined in such a case as this, are an important part of the State law upon the subject of attachment, and it seems to me that this court should administer the whole statute, and not a part only.

The other question presented relates to the sufficiency of the levy made by the sheriff under the writ of attachment issued from the State court. Upon this subject I am satisfied to abide by the reasoning of the district judge in his opinion herein upon the former hearing, fortified and supported as it is by the ruling of the Supreme Court Commission and the Supreme Court of Missouri, in the precisely analogous case of *Patterson* vs. *Stephenson*, April term, 1883.

The motion for rehearing is accordingly overruled.

124-131

SUPREME COURT U. S.
FILED
JAN 23 1885
JAMES H. MCKENNEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 1100.

CORNELIUS GUMBEL, PLAINTIFF IN ERROR,

versus

JNO. R. G. PITKIN, U. S. MARSHAL, KERBS & SPEISS AND OTHERS, DEFENDANTS IN ERROR.

Brief for Plaintiff in Error on Defendants' Motion to Dismiss, etc.

CHAS. F. BUCK,
GEO. H. BRAUGHN,
Counsel for Plaintiff in error.

A. W. Hyatt, Print, 73 Camp St. N. O—30,829

Second. The second ground for dismissal is that "no assignment of errors was transmitted with the record, etc.," and Micas vs. Williams, 104 U. S. 556, is cited to sustain the point. In this case the absence of an assignment of errors was stated, cumulatively, *arguendo*, but was not made the basis of the decision; and if it was this Honorable Court has since decided in School District of Ackley vs. Hall, 106 U. S., page 428, that "a writ of error will not be dismissed for want of jurisdiction by reason of a failure to annex thereto or return therewith an assignment of errors, pursuant to the requirements of section 997, Rev. Stat."

Third. The third ground for dismissal is "the writ of error does not set forth the names of the members of the several firms mentioned in the writs as defendants, etc."

On a strict application of the rule laid down in the case of "The Protector," 11 Wallace, 82, cited by counsel for defendants in error, moving the dismissal, this point would seem to be very serious if not fatal.

But we respectfully submit to your Honors in answer to this point:

1st. That by the pleadings and forms of appearance, both in the lower court and in this court, the point has been waived.

2d. Under the laws of Louisiana a partnership, is a distinct "entity" or "person," that may sue and be sued as such, without regard to the component members, and a suit against the "firm" brings all such component members into court.

3d. Under the acts of Congress, especially section 1005, R. S., the defect, if such it be, is remediable, in the discretion of this Honorable Court.

First. Throughout the proceedings in the lower court movers have been cited and have appealed and pleaded in the capacity recognized by the laws of Louisiana, to-wit. As a "legal person" competent to stand in judgment for its individual members.

See "acceptance of service," record, page 24, in this form:—

T. J. Semmes & Payne and Ernest T. Florance for Kerbs & Speiss, Maddux, Hobart & Co.

See also "answer" of Kerbs & Speiss and Maddux, Hobart & Co., pages 26 and 27, printed record, acting through present counsel. See, also, marshal's return of service of the writ, at pages 64 and 66.

Second. In support of our second point of answer, that under the laws of Louisiana a commercial copartnership is a distinct "entity" or "person," we submit in extenso the following from the decision of the Circuit Court of the Louisiana Circuit, in the case of "Liverpool, Brazil and River Platte Navigation Company vs. Agar & Lelong," the Hon. R. C. Billings, D. J., sitting in the Circuit Court (volume XIV, Federal Reports, page 66):

"The facts relating to the exceptions in this case are undisputed. This is a suit to recover upon a demand in favor of the plaintiff against the defendants as constituting the commercial firm of Agar & Lelong, domiciled and doing business in the city of New Orleans, and there incurring the obligation sought to be enforced. The partnership and each of the members have been cited, and have severally pleaded the want of jurisdiction in this Court, on the ground that the plaintiff is an alien, and that Lelong, one of the defendants, is also an alien. It is conceded that Agar is a citizen of Louisiana; that the partnership of Agar & Lelong was a commercial partnership, domiciled and doing business in the City of New Orleans, and composed of the defendants, Agar and Lelong, and that the obligation sued on originated there. It is urged as legal consequences of these admitted facts: 1st. That since the partnership of the defendants is in active existence under the laws of Louisiana, it alone can be sued upon a partnership obligation. 2d. That since plaintiff and one of the defendants' firm are aliens, the court is without jurisdiction as between the plaintiff and defendants' firm.

I think the first proposition is correctly stated. Under the law of Louisiana a commercial partnership is an entity, capable

of being sued; is brought into court as defendant by service of citation upon one of its members, and while the ultimate liability of the partners is *in solido*—i. e., joint and several—they, during the life of the partnership, cannot be charged individually, except through the partnership; that is, during the life of the partnership a partner is, like a corporator in a corporation, liable and made to respond individually only through a judgment against the intellectual being of which he is a component part.

In Breedlove vs. Nicolet, 7 Pet., 413, under circumstances exactly similar to those in this case, with reference to a Louisiana partnership, the Supreme Court maintained jurisdiction and gave judgment in favor of an alien plaintiff against two members of a partnership, though the third was not suable by reason of residing in Alabama. But this point as to the liability of the partnership alone in the first instance, and so long as its active existence continues, was not presented.

I think the proposition of law here presented must be maintained as resulting from our peculiar law, though it would be true in no other State in the Union. Elsewhere the partners are always individually liable, and the partnership as a distinct being cannot be cited. In Louisiana, during the existence of a commercial partnership, it alone can be sued for a partnership debt, and the citation may be served upon the firm by service upon the partner. The exception of the individual partners must, therefore, be maintained, so far as the attempt is made to sue them individually."

This peculiarity of Louisiana law will not be disputed by our learned adversaries. The Code of Practice of Louisiana, article 108, provides that when a suit is "against any commercial association, trading under a title or as a firm," the service must be made "on any of the partners in person, or at their store or counting-house by delivery to their clerk or agent."

A citation directed to the firm and served, as above set forth, brings the "firm" and its members into court.

Besides, the intervention of C. Gumbel is not strictly an original proceeding. The parties are already in court; no personal judgment is sought against any one. The question is only one of distribution of a fund claimed by the parties under writs of attachment, in their respective suits, and they are notified and made parties to the intervention and third opposition, as we find them.

An inspection of the *statement of facts* found by the court will show the nature of the issue between the parties. Some of the defendants are "natural persons"—individuals appearing as such; as to them and as to those in whose behalf no motion to dismiss is made, the writ of error would, under all conditions, stand.

Third. And, thirdly, all things considered, we respectfully submit that under section 1005, R. S., the omission of the names of the component members of the respective firms is a defect—if at all—which, in the discretion of this Honorable Court, may be remedied.

We have seen that under the laws and practice of Louisiana a commercial firm *must sue and be sued* in its copartnership name.

"The rule of law is, that during the existence of the partnership, suit must be brought against the firm, and not against individual partners." Peyton A. Key vs. Jno. Box et al., 14 L. Ann. 497.

The members of the firm are brought into court by citation directed to the "firm," and judgment is rendered not only against the firm but against the component members *in solido*.

The Federal tribunals in Louisiana will be governed in suits at law by the law of the State. If a suit were brought in the Federal Court by a citizen of New York against a resident commercial firm, that firm would have to be brought into court and cited as a "firm" and not by its individual members. A citation directed against the members of the firm, on the principles of the Protector Case, 11 Wallace, would not bring in the

firm, and the suit would be dismissed. Now, must the character and "individuality" of the defendant change or be changed when the cause comes to this court on a writ of error If the plaintiff be cast and sued out a writ of error, would the defendant in error not continue to be the "firm?" The judgment being in favor of the *firm* as a distinct "entity," must not the firm as such be the defendant in error? This great tribunal has always recognized distinctions resulting from local laws or peculiarities, and has never allowed injustice to result where parties acting in good faith, under the rules of law and practice, in the respective States, have made up their records according to such common practice and experience.

We submit therefore that we have the *real defendants*—the *firms* properly named and cited: *the essential thing is done.* We have not here as in the Protector case a defendant shown on the face of the papers not named, not nameable and not identifiable.

The commercial *firms*, in this case, are the defendants, not the persons composing the firms. The judgment against the firms binds all its members whoever they may be. The giving of the names would be descriptive and explanatory, but is not essential. A plaintiff suing a *firm* is entitled to judgment against the firm *and its members in solido* if he allege and show who they are: if he is content with a judgment against the *firm*, he is entitled to that without making the members *as such* parties. We submit therefore that the commercial "firms" and not the individuals composing them are defendants in error; that as such they are properly named and cited; but if for further certainty the names of the component members should be given, the correction may still, in the discretion of this Honorable Court, be made. As a final test, we submit to your Honors that under the laws of Louisiana every defendant in error herein has an action on the *supersedeas* bond, and that action would have to be brought in the name of the respective

"firms" as such, and could not be brought by their component members.

Finally on this point, let us suggest that the motion is made by the parties in the form and manner in which they appear *throughout* these proceedings, as "firms." They took the chances of a decision in their favor in that form and capacity: can they now claim that for the purpose of the proceedings on the writ of error, they are not the same parties they were at the trial below? Besides, we believe it is a universal rule of practice that a defect in a service or citation is cured or waived by appearing to urge other matters of defence.

In this cause the parties move to "dismiss and affirm." We submit that thereby they have waived the point that there are not before this Court proper parties to stand in judgment.

Fourth. It is urged that the judgment in this case can not be reviewed on writ of error. Bayard vs. Lombard, 9 Howward, 530, and Curtis vs. Pettipain, 18 Howard, 109, are cited in support of this position. It would be a work of supererogation, if not presumption on our part, to analyse these decisions; a most cursory perusal will show that this Court did not decide that it could not review a judgment deciding a controversy between rival claimants to property or proceeds in the hands of its executive officers, but only decided that in those particular cases the *proceedings* had were such that no such joinder or issue was made by the parties in interest by direct suit or otherwise, that the judgment could be reviewed by writ of error or appeal.

In other words, this Court did not decide that it could not or would not take jurisdiction over the subject matter, but only that no appeal or writ of error would lie from an order or judgment rendered on a motion "collateral to the record made by a stranger to it." The Court in concluding its reasons for judgment says in terms, that on proper proceedings a writ of error or an appeal would lie.

"The persons complaining in this case should have filed

possession until VALID WRITS, *signed at the house of the circuit judge on the first moments of "Monday morning," could reach his office.*

This presents one issue, and a more important one in the administration of justice cannot well be imagined or conceived.

Now, further: C. Gumbel, apprehensive of just such conduct on the part of the seizing creditors and the United States Marshal, acting under instructions from them, took the precaution to serve garnishment process on the marshal, Mr. Pitken, simultaneously with the proceedings to effect *actual* seizure. We copy from the "statement of facts:"

"*The sheriff placed keepers around the building and guarded the same continuously down to the time of sale, and served notice of seizure and subsequently process of garnishment upon the marshal in charge of the store* BEFORE SERVICE OF ANY OF THE MONDAY WRITS, *who had executed the process of attachment from this Court.*"

Succumbing to the logic of events intervenor was forced, as appears from his supplemental petitions, to change somewhat his position.

The property seized was sold; its reclamation in kind became useless. He now asks simply recognition of his rights against the property as an attaching creditor, and hopes relief on one of two or both theories, to-wit: 1st. That the sheriff effected a valid seizure, and that this Honorable Court, under the circumstances, will not award to litigants the fruits of violent and illegal acts perpetrated in its name by its ministerial officer, to the prejudice of rights acquired under judicial proceedings by other suitors, in courts of concurrent (*ad hoc*) jurisdiction.

2d. That for the purposes of administering the State attachment laws, under the acts of Congress, directing that the same effect shall be given to such laws by the Federal courts as by the State courts, the Federal and State courts are courts of concurrent jurisdiction, and whichever court is seized of jurisdiction over

the property attached controlling the distribution, will recognize the process issued from the other to rank according to the laws of the State and the practice in the State courts. We claim that service of garnishment process on the marshal, under the writ from the State court—the only court to which we could go—gave us rank and standing as an attaching creditor. When this process was served the marshal held or pretended to hold under the Sunday writs. When these Sunday writs fell there was no seizure but that of C. Gumbel, and Gumbel became the first attaching creditor and prays now to be recognized as such.

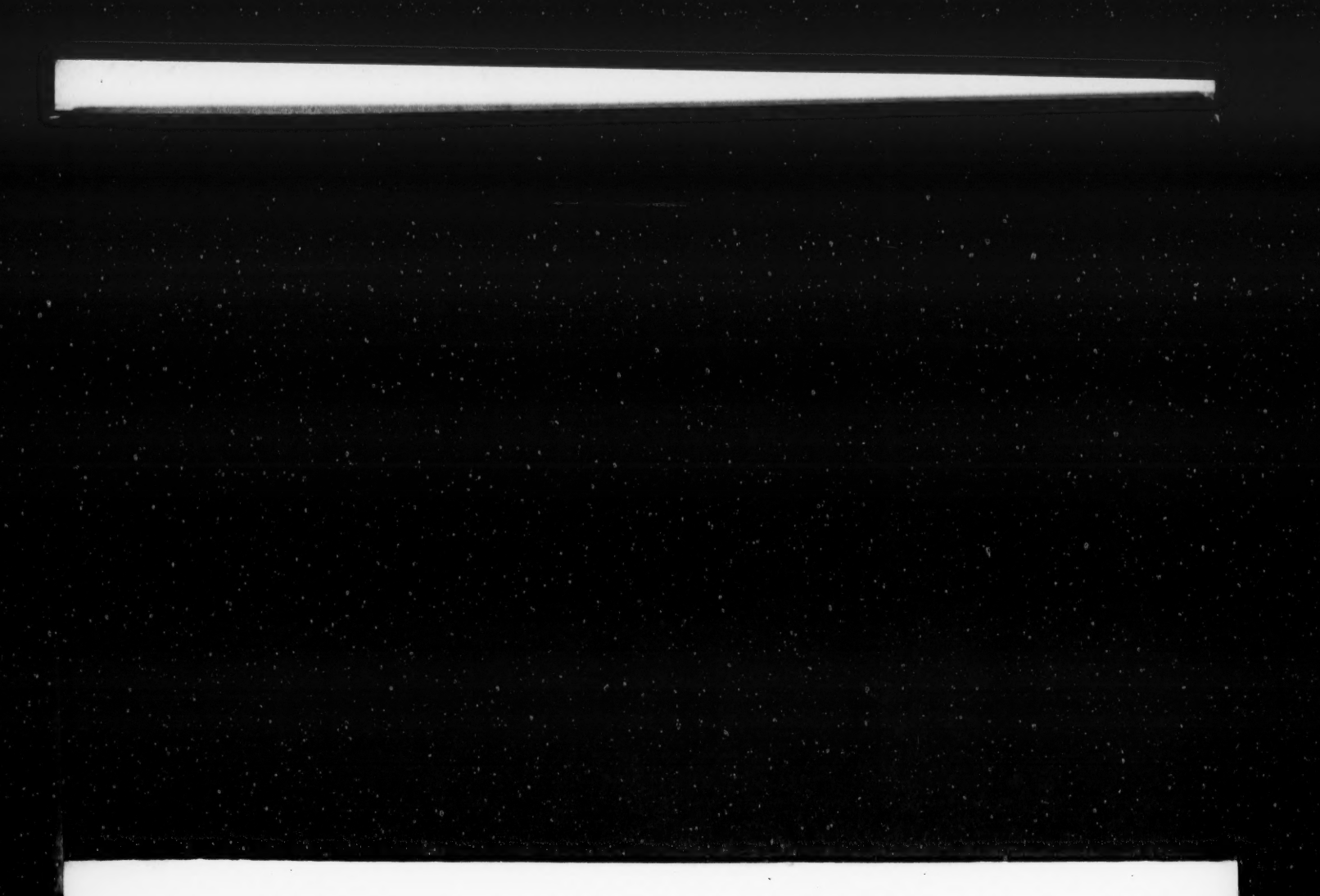
We believe that for the purposes of answering a motion "to affirm," we have already entered more fully into the issues of the cause than is necessary. Surely the showing which we make to your Honors is sufficient to satisfy the court that this record does not present a cause coming within either condition of section 5, rule 6. Clearly it is not "manifest that the writ of error was taken for delay only, or that the question on which the jurisdiction depends is so frivolous as not to need further argument."

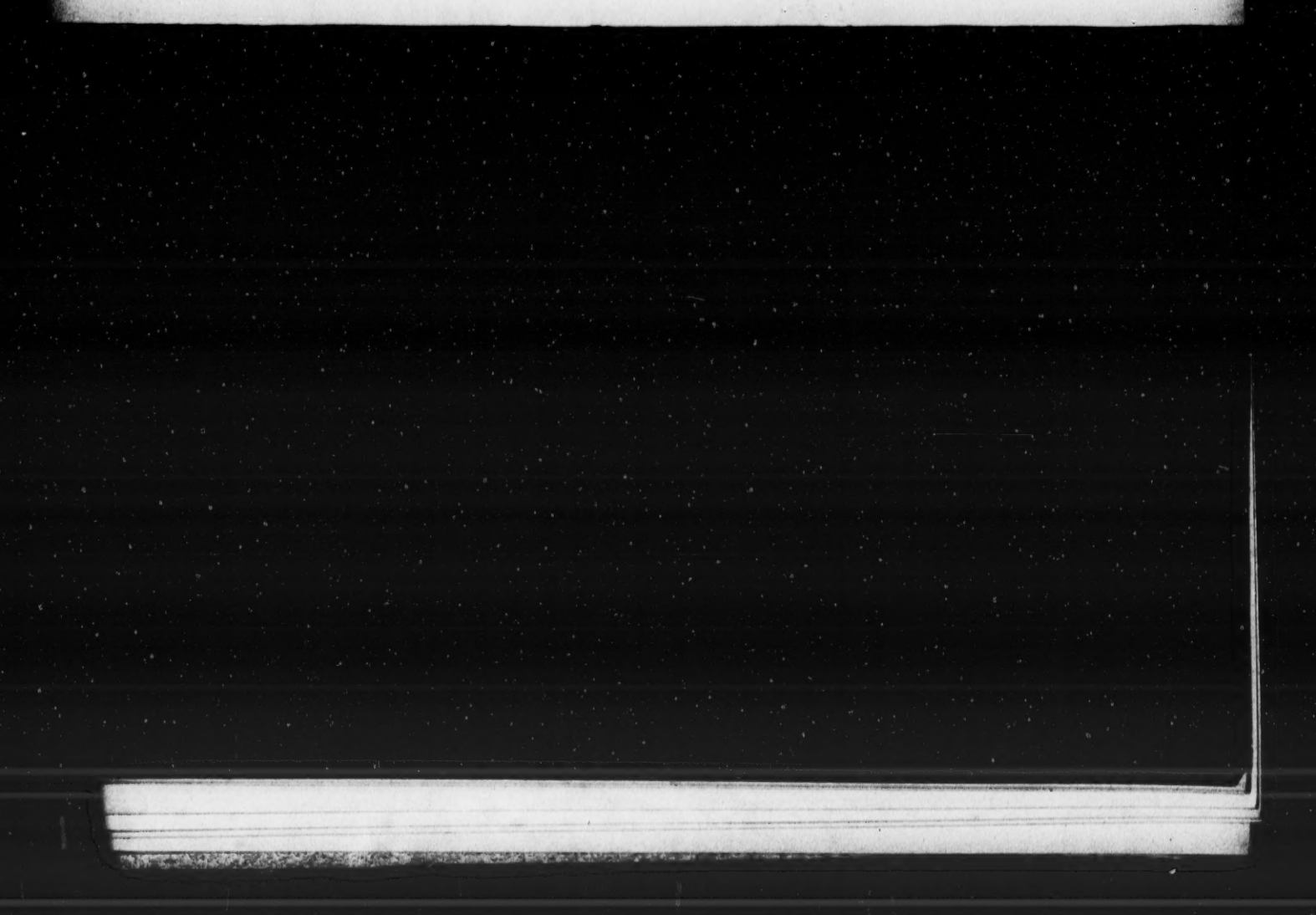
Illustrative of the novelty and importance of the questions involved, and to show that they are not to be solved by an application of the principle of jurisdiction invoked by counsel for defendants in error, we refer your Honors to the case of "*Bates and others vs. Days*," XVII Federal Reporter, page 167. In that case, under "writs of attachment, the marshal had seized certain property of the defendant. A subsequent writ of attachment issued from a State court, executed by notice of seizure and garnishment process on the United States Marshal. A *third* writ was issued from the Circuit Court, and the proceeds being insufficient to satisfy the three writs, a controversy arose between the last attaching creditor in the Federal Court and the plaintiff in attachment from the State Court. There, as in this case, it was contested that the suitor in the State Court could acquire no rights against property in the possession of the

Federal Court. Berkel, D. J., affirmed on motion for rehearing by McCrary, Circuit Judge, gave the writ from the State Court rank and recognition, according to the time and order of its issuance and execution by service of garnishment process on the Marshal. We refer to this decision to show the difference between the case at bar and the adjudged cases on which the motion to affirm is founded.

We respectfully pray, therefore, that defendants' motion be denied.

CHAS. F. BUCK,
GEO. H. BRAUGHN,
Counsel for Plaintiff in error.





SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM OF 1887.

No. 116.

CORNELIUS GUMBEL, PLAINTIFF IN ERROR,

vs.

JOHN R. G. PITKIN, MADDUX, HOBART & CO., KERBS & SPIES ET AL.

There is but one question in this case: Did the sheriff make a valid seizure of the goods, under the writ of attachment issued by the State court, at the suit of Gumbel?

It is not pretended that the sheriff ever took physical possession of the goods in question. The goods always remained in the possession and under the control of the United States marshal, until the sale thereof, by the order of the United States Circuit Court, and the proceeds of sale are now in the hands of the marshal, subject to the order of the Circuit Court. These facts are inconsistent with any physical possession by the sheriff; indeed, the supplemental petition of Gumbel, filed in the State court, wherein Pitkin, as United States marshal, was made garnishee, admits that the sheriff had made no physical seizure, and that the goods were in the possession of Pitkin as marshal, p. 35.

The case then turns on the question of seizure, by virtue of the garnishment proceedings. The case stated, shows that the marshal preserved possession of the goods without inter-

ruption until they were sold by him, under the Monday writs, the Sunday writs having been abandoned; the time when those writs were abandoned is not found; the inference is that they were not abandoned until an order for the sale under the Monday writs was rendered, or until after the marshal had received the Monday writs. The case stated, also shows that the sheriff made no caption of the property, its possession was withheld from him.

Actual physical possession is necessary to constitute a valid seizure under a writ of *fieri facias*, or a writ of attachment, unless there be garnishment proceedings, then service of interrogatories on the garnishee suffices.

Haggerty vs. Wilber, 6 John. 287.
Scott vs. Davis, 26 La. An. 688.
Stockton vs. Downey, 6 La. An. 585.
Page vs. Generes, 6 La. An. 551.
Dennistown vs. N. York Co., 6 La. An. 782.
Nelson vs. Simpson, 9 La. An. 311.

It is admitted that priority or privilege is dependent upon the date of seizure, and not upon the date of issue of the writ, and when necessary fractions of the day will be noticed.

C. P. Art. 723.
Schofield vs. Bradley, 8 Martin, 258.
Hopp vs. Glover, 15 La. 461.
Herman vs. Juge, 6 La. An. 768.
Tufts vs. Carradine, 4 La. An. 430.

Indeed, seizure alone will not confer priority unless it is followed up by a judgment in the lifetime of the debtor or before a *cessio bonorium*, or surrender to his creditors; the death or insolvency of the debtor before judgment defeats the attachment.

Marr vs. Lartigue, 2 Martin, 98.
Hanna vs. Creditors, 12 Mart. 32.

Beck vs. Brady, 6 La. An. 444.
Fisher vs. Vose, 3 Rob. 457.
Collins vs. Duffy, 7 La. An. 39.

The case is thus reduced to the effect of the seizure in the hands of the marshal as garnishee.

The court will notice that the petition for garnishment avers, that "J. R. G. Pitkin, marshal of the United States District and Circuit Court for the Eastern District of Louisiana and fifth circuit, third person, is indebted unto said defendant, or has property in his possession, or under his control, belonging to said defendant.

"Therefore, petitioner prays that said J. R. G. Pitkin, marshal, ets., be made garnishee herein, and ordered to answer, under oath, to the accompanying interrogatories," etc., p. 35.

The citation is directed to "J. R. G. Pitkin, marshal of the United States District and Circuit Court for the Eastern District and fifth circuit, garnishee," etc., p. 36.

Sheriff's return on the citation shows service on "J. R. G. Pitkin, marshal of the United States District and Circuit Court for the Eastern District of Louisiana and fifth circuit," p. 37.

Sheriff's return on the writ of attachment shows "general seizure made, by garnishment, in the hands of J. R. G. Pitkin, marshal of the United States District Court; from said general seizure nothing has, as yet, come into my possession, or under my control," p. 37. The notice of seizure is addressed to "J. R. G. Pitkin, marshal of the United States Circuit for the fifth circuit and Eastern District of Louisiana, garnishee," p. 38.

The marshal filed an exception, on the ground "that in his said capacity, this Honorable Court is without jurisdiction to make him a garnishee," p. 39.

Thereupon "the exceptor was excused from answering the interrogatories accompanying garnishment proceedings herein, pending foregoing exception," p. 39.

This exception never was disposed of; but a judgment by default was taken against the debtor, Dreyfus. on 16th November, 1883, *no judgment* was rendered *against the garnishee*, p. 40. Execution was issued against the debtor, Dreyfus, on 6th December, 1883, and *a rule for contempt* taken against the marshal, for refusing to surrender to the sheriff the possession of the goods which he then held, and had held ever since the 28th October, 1883, under writs issued from the Circuit Court," p. 43.

These proceedings show that the plaintiff in error, relied all the while on his *physical seizure*, or attempted physical seizure, and not on his *garnishment* proceedings; he never attempted to obtain *judgment against the garnishee;* the proceedings against the garnishee were stopped by his exception to the jurisdiction of the court, on the ground that it could not hold him liable as garnishee in his *official capacity* for property in his *official possession*.

Besides, there is a motion still pending in the State court, to dissolve the attachment of Gumbel, on the ground that the allegations contained in the affidavit are false, p. 39. Notwithstanding the pendency of this rule, the plaintiff took a judgment, by default, against Dreyfus, and issued execution thereon. The validity of the attachment in the State court has not been tried; it is still pending there; for judgment on *the debt* is a very different thing from judgment on the *attachment*. The State court has merely rendered a personal judgment against the debtor, Dreyfus, who had been personally served with process etc.; on this judgment a *fi. fa.* was issued, and then a rule was taken on the marshal, not as *garnishee*, but on him as a person unlawfully interfering with the possession of the sheriff, who, it is alleged, had made a physical seizure on 29th October, 1883.

The garnishment proceedings were not relied on; what the plaintiff in error has always claimed is, the right of the sheriff to hold the goods, as first possessor under the State writ. This

contention fails if no such seizure was made, and there should be an end of his case.

I consider that Hagan vs. Lucas, 10 Pet., and Taylor vs. Carryl, 20 Howard, settle the question that goods in possession of the marshal are not *susceptible of seizure* by process from a State court. In Hagan vs. Lucas, the court say: "Where a sheriff has made a levy and afterwards received execution against the same defendant, he may appropriate any surplus that shall remain after satisfying the first levy by the order of the court. *But the same rule does not govern where the executions*, as in the present case, *issue from different* jurisdictions. The marshal may apply monies collected under different executions the same as the sheriff. But this cannot be done as between the marshal and the sheriff; a most injurious conflict of jurisdiction would be likely often to arise between the Federal and the State courts, if the final process of the one could be levied on property which had been taken on process by the debtor. The marshal or the sheriff, as the case may be, by a levy acquires a special property in the goods, and may maintain an action for them. But if the same goods may be taken in execution by the marshal and the sheriff, does the special property vest in the one or the other, or both of them? *No such case can exist; property once levied on remains in the custody of the law* and is not liable to be taken by another execution in the hands of a different officer, and especially by an officer acting under another jurisdiction." The principle of this case was applied in 8 How. 107; 14 How. 52 and 368; Pulliam vs. Osborn, 17 How. 471 and finally in Taylor vs. Carryl, 20 How. 596.

On the same principle it has been adjudged that a debt cannot be attached in a State court after suit has been brought upon it in a court of the United States.

Wallace vs. McConnell, 13 Pet. 136.
Thomas vs. Wooldridge, 2 Woods 668.

For the same reason it was held in Harris vs. Dennie, 3 Pet. 292 that merchandize in possession of the Collector of Customs could not be attached prior to the payment of the duties thereon. The court say an attachment presuppposes a right to take possession and custody of the goods, and to make such possession and custody exclusive.

It is impossible that there shall be two concurrent exclusive possessions of the same goods at the same time by two separate courts under writs issued from different jurisdictions. The Louisiana statute referred to in the brief of the appellant is a statute regulating the adjustment of privileges when property has been seized by different courts of the State; this adjustment is to be made by the court by whose mandate the property was first seized, and for that purpose *all suits* are to be transferred to such court. It is similar to the State insolvent law, which provides that when the debter makes a *cessio bonorum*, all suits against his person and property are to be transferred to the insolvent court.

The Missouri statute is totally dissimilar. The Louisiana statute merely provides what court shall have jurisdiction to classify privileges in case of conflicts between creditors; the Missouri statute does not legislate on the subject of *jurisdiction*, but confers power on *the court* when the *same property is attached in several actions* to determine *all controversies which may arise between any of the plaintiff's* in relation to the *property, priority*, validity, good faith and effect of the different attachments, *and* to *dissolve any attachment partially or wholly, or postpone it to another, or make such order in the premises as right and justice may require.*

No court in Louisiana possesses any such power; nor is any such discretion confided to any judicial tribunal in the State.

The facts show that the marshal was in possession of the goods qua marshal; such possession was the possession of the

court which issued the writ by virtue of which the marshal took possession.

The marshal was in possession *virtute officii*. In Sanderson vs. Baker, 3 Wilson, 309, it was decided by the Court of Common Pleas, as long ago as 1772, that trespass *vi et armis* lies against a sheriff for the act of his bailiff in taking the goods of A, instead of the goods of B, under a *fi. fa.* This principle has been approved in the later cases. In Smart vs. Hutton, 2 Nev. & Man. 426, the sheriff's officer arrested a defendant without authority of law, but the sheriff was held liable for any act of his deputy *colore officii*. The same principle has been followed in Massachusetts.

Campbell vs. Phelps, 17 Mass. 246.
Knowlton vs. Bartlett, 1 Pick. 271.

In the case in 1st Pickering, the court say: "If the act from which the injury resulted was an official act, the authorities are clear that the sheriff is answerable; if it was not an official act, but a personal act, it is equally clear that he is not answerable. But an official act does not mean what the deputy might lawfully do in the execution of his office; if so, no action would ever lie against the sheriff for the misconduct of his deputy. It means, therefore, *whatever is done under color or by virtue of his office.*"

The same in substance is said in the case of Walden vs. Davison, 15 Wend. 575.

In James vs. McCubbin, 2 Call. 273, a deputy drove one man's property on the land of another in order that he might levy a distress warrant on it, which he did; the sheriff was held liable for this most willful and unauthorized act, because it was done by *color* of *office*.

The taking by a marshal of the United States, upon a writ of attachment, on *mesne* process against one person, of the goods

of another, is a breach of the condition of his official bond, for which his sureties are liable.

This was recently decided by the court in Lammon vs. Feusier, 111 U. S. 19. In that case the court say: "Where a marshal, upon a writ of attachment on *mesne* process, takes property of a person not named in the writ, the property is in his *official custody* and under the control of the court whose officer he is, and whose writ he is executing, and according to the decisions of this court, the rightful owner cannot maintain an *action of replevin against him, nor recover the property specifically*, in any way, except in the court from which the writ issued." Freeman vs. Howe, 24 How. 450; Krippendorf vs. Hyde, 110 U. S. 276.

If a writ of replevin could not reach the property, how could a writ of attachment or a garnishment proceeding under a writ of attachment issued by a State court affect it?

In Lowell vs. Parker, 10 Met. 313, a constable undertook to execute a writ in which the *ad damnum* exceeded $70, and which, therefore, he had no authority to serve. His sureties, when sued on the constable's bond, objected that they were not liable, because the service of such a writ could not be an *official act.* The court say: "But we think the objection cannot be sustained. He was an officer, had authority to attach goods on *mesne* process on a *suitable writ, professed to have such process* and, thereupon, took the plaintiff's goods. * * He, therefore, took the goods *colore officii*, and though he had no sufficient warrant for taking them, yet he is responsible to third persons, because such taking was a breach of his official duty."

The issue of the Sunday writs was not an unlawful act.

We never had a Sunday law in Louisiana until 1886, and that law merely requires stores, shops, saloons and all licensed places of business of a certain class to be closed. At no time was it unlawful to make a contract on Sunday, nor is it unlawful

now, except in the prosecution of business in the prohibited places.

Prior to 1886, Sunday traffic was subject to the police regulations of municipal authority.

State vs. Bott, 31 La. An. 663.
Mindin vs. Silverstein, 36 La. An. 916.

But the Code of Practice provides in Article 207, "That no *citation* can issue, no *demand* can be made, no *proceeding had, nor suits instituted* on *Sundays*, on the 4th of July, or the 8th of January, or the 25th of December, 22d of February or on Good Friday; nor shall any arrest be made after sunset on any individual within his domicile."

The case stated finds that the writs of attachment were obtained on Sunday; the issue of such writs by the clerk of the court was a mere ministerial act, and is not a *judicial proceeding.*

The third opponent, Gumbel, avers that on the morning of the 29th of October, 1883, the sheriff "found at the store and claiming to exercise rights of possession and control, persons who styled themselves deputy marshals of this court, and petitioner believes and avers that they were such who pretended and asserted that they were in charge as keepers, and in execu tion of writs of attachment issued from this Honorable Court, in said cause of Corning & Co. vs. Dreyfus, and in all or some other of the causes in which the parties hereinbefore named are plaintiffs and the said Jos. Dreyfus defendant. Opponent avers that at said time of seizure made by him, no *valid* or *legal writ* had issued from this Honorable Court; that the writ or writs under which the said marshal or his deputies were holding or pretending to hold said property, issued in this cause and others aforesaid, *had been issued on a dies non, to-wit: Sunday, 28th October, 1883*, which said writs were absolutely null and void, both at common law and under the statute law of Louisiana," etc., p. 13-14.

I submit that there is no law in Louisiana which prohibits the issue or the levy of a writ of attachment on Sunday. We have no common law, and if we had, the common law did not forbid any but *judicial* acts on Sunday; all other prohibitions are statutory.

Swann vs. Broome, 3 Burrows, 1595.
Pearce vs. Atwood, 13 Mass. 347.

Our statute does not allow a *citation* to issue, nor a demand to be made on Sunday, or other *dies non;* nor can a *suit* be instituted on Sunday, nor can a *judicial proceeding* be had on that day.

But in a suit instituted on Saturday, a *writ of attachment* may be issued on Sunday by the clerk, because the *issue of the writ* is a mere *ministerial act;* and there is no law which prevents the levy of a writ of attachment on Sunday.

The issue of the writ of attachment by the clerk has been held to be the performance of a mere ministerial duty.

Purdee vs. Cooke, 18 La. 485.

So it is held that the receiving of a verdict on Sunday is not a judicial proceeding.

Houghtany vs. Osborne, 15 John. 119.
Baxter vs. People, 3 Gilman, 368.

So the issue of a summons on Sunday by a justice of the peace, was held to be a ministerial act.

Smith vs. Ihling, 47 Mich. 614.

So the taking of a recognizance on Sunday was regarded as a ministerial act, and therefore valid.

Johnson vs. People, 31 Ill. 473.

So the Supreme Court of Massachusetts seemed to treat the issue of a writ of attachment, although it was unnecessary to decide the point.

Johnson vs. Day, 17 Pick. 109.

Respectfully submitted,

THOS. J. SEMMES,

For Maddux, Hobart & Co., Kerbs & Spies, Corning & Co.,

Defendants in Error.

31
124-131

SUPREME COURT U.S.
FILED.
JAN 2 1885
JAMES H. McKENNEY.
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 1100.

CORNELIUS GUMBEL, PLAINTIFF IN ERROR,

versus

JOHN R. G. PITKIN, UNITED STATES MARSHAL, KERBS & SPEISS, AND MADDUX, HOBART & CO., AND OTHERS, DEFENDANTS IN ERROR.

THOS. J. SEMMES,
Of Counsel for Defendants in Error, Kerbs & Speiss,
and Maddux, Hobart & Co.

A. W. Hyatt, Print, 73 Camp St, N. O—30,621

SUPREME COURT OF THE UNITED STATES.

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CORNELIUS GUMBEL, PLAINTIFF IN ERROR,

versus

JOHN R. G. PITKIN, UNITED STATES MARSHAL, KERBS & SPEISS, AND MADDUX, HOBART & CO., AND OTHERS, DEFENDANTS IN ERROR.

The defendants in error, Kerbs & Speiss, and Maddux, Hobart & Co., through their undersigned counsel, move the Court to dismiss the writ of error herein issued and to affirm the judgment.

The grounds for dismissal are:

1. The writ of error was never served by lodging a copy thereof with the Clerk of the Court.

2. No assignment of errors was transmitted with the record, as required by the rules of the Court, and by Section 997 of the Revised Statutes.

3. The writ of error does not set forth the names of the members of the several firms mentioned in the writ as defendants, and there is nothing in the record by which this irregularity may be corrected.

4. The original petition demands restoration of the goods seized by the Marshal to the Sheriff, on the ground of previous seizure by that officer under an attachment emanating from the State Court; pp. 12–15; the amended petition abandons that ground, and goes for priority in the distribution of the proceeds

mate fact is conclusive; the process of ratiocination by which the Court arrived at the fact is not reviewable.

Norris vs. Jackson, 9 Wall. 127.

Respectfully submitted.

THOS. J. SEMMES,

Of Counsel for Defendants in Error, Kerbs & Speiss, and Maddux, Hobart & Co.

Counsel for plaintiff in error will take notice that the foregoing motion to dismiss and affirm will be submitted to the Supreme Court of the United States on Monday, January 26th, 1885, at 12 M.

THOS. J. SEMMES,

Of Counsel for Defendants in Error above named.

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124-151

FILED
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JAMES H. McKENNEY,

SUPREME COURT of the UNITED STATES.

OCTOBER TERM 1885.

No. 911.

CORNELIUS GUMBEL, PLAINTIFF IN ERROR,

vs.

J. R. G. PITKIN, U. S. MARSHAL,

KERBS AND SPIESS, ET AL'S.

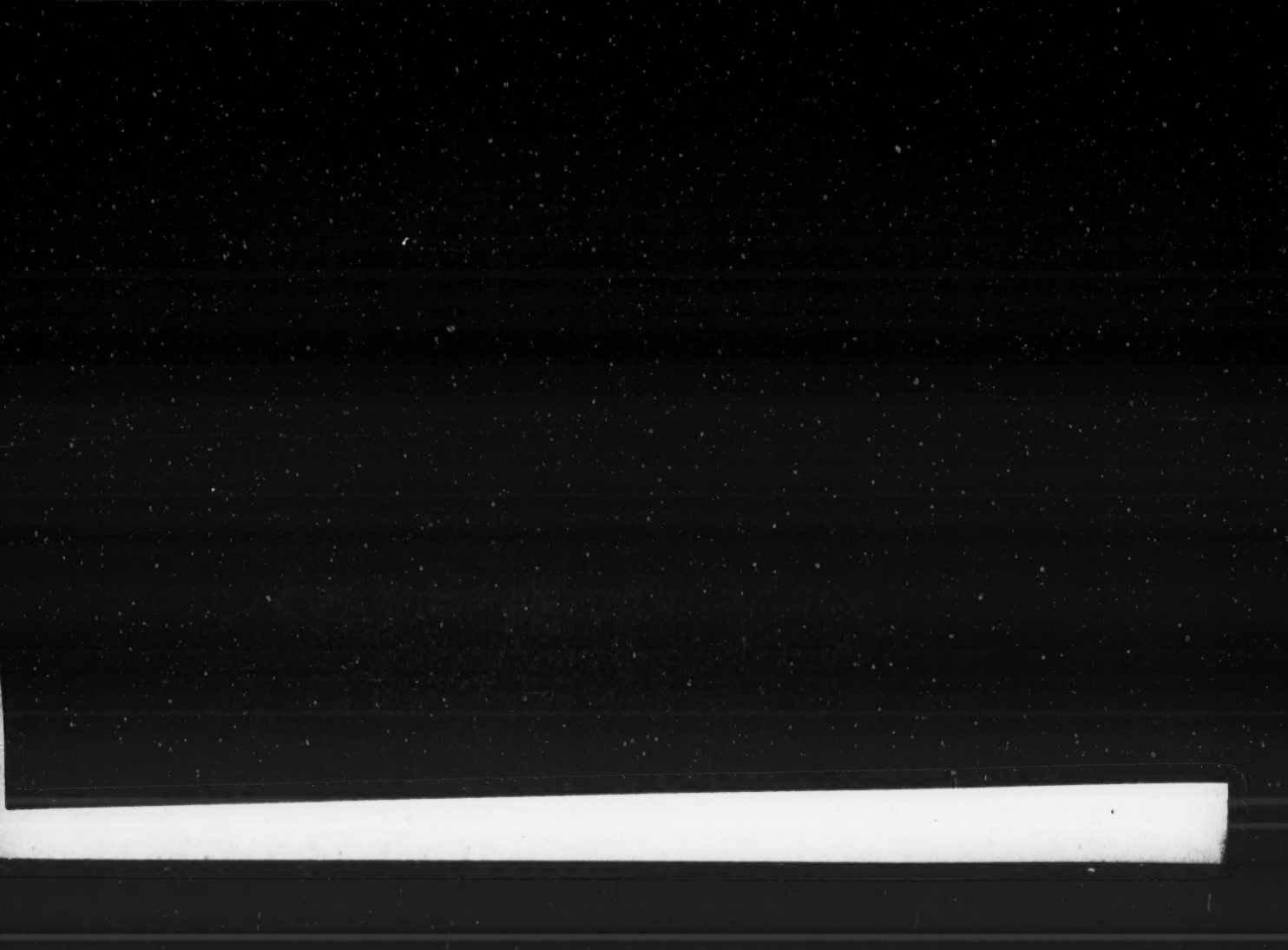
IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

Argument on behalf of WILLIAM ADLER and C. LAZARD Defendants in error,

J. C. GILMORE,

Attorney for William Adler and C. Lazard, defendants in error.

November, 1885.



SUPREME COURT of the UNITED STATES.

OCTOBER TERM 1885.

No. 711.

CORNELIUS GUMBEL, PLAINTIFF IN ERROR

vs.

J. R. G. PITKIN, U. S. MARSHAL,

KERBS AND SPIESS, ET ALS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

Argument on behalf of WILLIAM ADLER and C. LAZARD Defendants in error.

This case was before the Court at the October term upon motion to dismiss and affirm and it was then held that it was a proper case to be heard upon the merits. 113 U. S., 545.

On the 27th of October, 1883, the plaintiff in error obtained an attachment in the Civil District Court in the city of New Orleans for the sum of $23,184.39, against the property of Joseph Dreyfus. The attachment was not levied the same day. The next day was Sunday and other creditors, defend-

ants in error, finding that Dreyfus was removing his stock in the interim of the Sabbath, brought suits and obtained attachments Sunday morning in the United States Circuit Court by virtue of which the Marshal took possession of the stock of goods of defendant, consisting of liquors, etc., in the store 33 Tchoupitoulas street, New Orleans.

Fearing these Sunday writs would not hold and no inchoate lien would follow from them, the same creditors and others, defendants in error, repaired to Court in the early hours of Monday morning and procured other writs in new suits filed by them, which, as speedily as possible were placed in the Marshal's hands.

In the meantime, before the new writs from the Circuit Court could be got to the Marshal, the Sheriff had arrived at the store, and was knocking at the doors to gain admittance, to make a levy under State Court writs of plaintiff and others, but was excluded by the Marsha's deputies who had locked themselves inside and were holding under the Sunday writs.

A notice of garnishment was served upon the Marshal by the Sheriff, which, subsequently, the Marshal appears to have been excused from answering, pending an exception filed by him. P. 39, printed record.

In this situation, Gumbel, and Gumbel & Co., State Court suitors, resorted to a motion in the Civil District Court for an order compelling the Marshal, and defendents in error, to surrender the property to the Sheriff. Petition and document, p.p. 14–17; p. 31; 42–48, printed record.

This rule, which was filed in their respective suits, in coordinate divisions B and C of the Court to which the cases had been allotted, was taken up and tried contradictorily with all parties, before Monroe, J. of division C, the other suit abiding the decision. P. 45–46; 42–43; 14, 15, 16, printed record.

The rule was discharged with leave to movers to apply to the United States Circuit Court.

Plaintiff in error thereupon appeared by petition of intervention and third opposition in the United States Circuit Court, in the distribution proceeding, adopting the recourse left him by the State Court. P. 14.

On the intervention and third opposition, the case comes to this Court.

II.

The relief sought by the plaintiff in error cannot be allowed.

In the first place, because the ruling of the State Court has closed the question. Pleas of *res judicata*, p.p. 20, 21, printed record. P. 30.

Under the laws of Louisiana, definitive judgments do not affect the property of the defendant as liens. Code of Practice, Art. 545.

A privilege is acquired by the creditor, by the mere act of seizure, which, in the case of provisional writs accrues by final judgment and order of execution on the property. In the case of several successive seizures, the creditors making them are entitled to a preference over other ordinary creditors, according to the order of their seizures.

Arts. 722, 723 and 724 of the Code of Practice of Louisiana, are, as follows:

"Art. 722. The creditor by the mere act of seizure is invested with a privilege on the movable and immovable property thus seized, which entitles him to a preference over other creditors, unless the debtor has become bankrupt previous to the seizure."

"Art. 723. When several successive seizures are made of the same property, the creditors making them are entitled to a preference over other ordinary creditors, according to the order of their seizures."

"Art. 724. Provisional seizures and sequestration give no privilege to those who have made them, until they have obtained a judgment and order of execution on the property sequestered or provisionally seized."

There is another Article, 301, in connection with liens, which however, does not enter into the discussion of this case, because not in issue and no insolvency of the debtor has been declared.

Art. 301. The sheriff may be enjoined from paying the

claim of the plaintiff out of the proceeds of the sale of the property seized, if a third person oppose such payment, alleging that the defendant had no other property to pay his debts, except that which had been seized and pray that the proceeds of the sale may be brought into Court, to be distributed among all the creditors of the defendant according to the order of their respective privilege or hypothecation."

The petition of intervention and third opposition has a lien or interest in the property for its object, which is the extent of plaintiff's case.

Art. 396, 397, Code of Practice.

Plaintiff in error invokes the provisions of Section 915, Revised Statutes of the United States (Act June 1st, 1872), as giving effect in the United States Court to the lien or interest which he pretends to have acquired in the property in the hands of the Marshal, by the intervention and service of process of the Sheriff.

This Court has frequently had to consider innovations and transformations of a like nature, imputed to this Act, but equally foreign to its purpose, and to define the scope of the Act. To the plaintiff coming from State Court, it is so utterly inapplicable as to be not at all involved in the consideration of his case. Nudd vs. Burrow's Assignee, 91 U. S., 441; Indianapolis R. R. Co. vs. Horst, 93 U. S., 301; Amis vs. Smith, 16 Pet., 314; Chittenden vs. Darden & Holston, 2 Woods, 437; Field's Fed. Procedure, p. 175; Boogher vs. Insurance Co., 103 U. S., 95; Kern vs. Huidekoper, 103 U. S., 485; Ex. parte Boyd, 105 U. S., 647; Canal & Claiborne Street Railroad Co., Garnishee vs. Hart, 114 U. S., 661, R.

Adapted to fit the case made by plaintiff, the Act would be deprived of all effect, by reopening to controversy the rights secured by the statutory provisions, which it proposes to adopt, creating liens or privileges in attachment cases and giving creditors preference according to the order of their seizures. C. P. La., Arts. 724, 722, 723.

The theory of the case of Bates vs. Days, 17 Fed. Reporter, 167, is relied upon in support of the view which, is that creditors in United States Court have the same but no greater rights than

litigants in State Courts or domestic creditors. This theory may be admitted without provoking the conclusion which is drawn from it. The rights of creditors flow from the laws which are adopted as they are, into the practice of the U. S. Courts, and are not altered or disturbed in principle or substance by the medium of their adoption.

The object proposed was to conform, as near as may be, the remedies by attachment or other process in the two systems of judicature, not to impose on the Federal Court a penetrating form of remedy reaching the rights of parties, however remotely interested in the property under seizure. This right already prevailed *proprio vigore* in the United States Courts, as declared in Freeman vs. Howe, 24 How., 450, and subsequent cases, and the plaintiff availed himself of it, when he asserted an original case to title in property under seizure, unsupported by law.

Nothing has been adduced tending to show that as applied to the facts, the law of Louisiana was other than the Circuit Court has held it to be.

III.

The race of diligence was over for this intervenor when the property got into the custody of the Circuit Court, for it was the actual and not the constructive custody of the law and the case was one of superior diligence of the parties. Drake on Attachment, Sec. 251, p. 123; Sec. 503–506.

The property was withdrawn from the reach of process of other Courts and the intervenor cannot renew a litigation in Circuit Court which took this turn against him in the Civil District Court

As to other creditors named in the Circuit Court, the Sunday seizures appear to him an opportunity for laying a claim to priority over all others, on the ground that the Marshal's possession under them was a possession under color of law. P. 54, No. 3 printed record. P. 50 as to claims of H. Weiler & Co.

His case differs from Bates vs. Days, 17 Fed. Rep., 617, in that it seeks to take the property out of seizure or distribute it as if originally held by the State Court.

It is such an anomoly as could only be referred to peculiar statutory provision or questionable exercise of judicial power, and accordingly, McCrary, J., sensible of the delicacy of the step, in the authority referred to, preferred to rest his concurrence on the particular import of the section of the Revised Statutes of Missouri, committing to the Courts the adjustment of all questions growing out of the levy of several writs of attachment issued from the same or from different Courts upon the same property, even by dissolving any attachment partially or wholly, postponing it to another, or making such order in the premises as right and justice may require. 17 Fed. Rep., 168, Sec. 447, R. S., Missouri.

The Courts of Louisiana have never arrogated the prerogative functions which it is here contended interpose, nor does the construction seem necessary to the statute of Missouri, that the rights of the parties should be otherwise than the laws provide, although in the recognition of those rights the Court may make such order in the premises as right and justice may require. We think essentially it confers no new rights on the parties and gives them no title to standing in this Court which they did not possess before. There is no mistaking the plaintiff's aim as a contemplated interference with property in *gremio legis*.

The presumption of the intervention that, if the possession of the Marshal prevented any actual seizure or physical control over the property by the Sheriff, that then intervenor is entitled to have his attachment recognized by this honorable Court and is entitled to share according to his rank in the distribution of the proceeds of the property, etc., p. 231, printed record—in the nature of things, is a case which this Court has often said, cannot arise.

Hagan vs. Lucas, 10 Peters, 400; Pulliam vs. Osborne, 17 How. 471; Taylor vs. Carry, 20, H. 583; Covell vs. Heyman, 111 U. S., 176; Williams vs. Benedict, 8 H. 107; Freeman vs. Howe, 24 H. 450; Buck vs. Colbath, 3 Wall, 334; Yonley vs. Lavender, 21 Wall, 276; Peoples' Bank vs. Calhoun, 102 U. S, 256; Barton vs. Barbour, 104 U. S., 126; Lammon vs. Feuzier, 111 U. S., p. 17; Heidritter vs. Elizabeth OilCloth Co.,

112 U. S., 294; Krippendorf vs. Hyde, 110 U. S., 276; Wiswall, vs. Sampson, 14 How., 52.

The difficulty with plaintiff is that his process was not levied Saturday when issued, permitting, if not inviting preferences in other creditors while it continued in abeyance—even from State Court. Waite's Digest, Vol. VI, p. 619, 620.

IV.

The Code of practice of Louisiana provides:

Art. 207. No citation can issue, no demand can be made, no proceeding had, nor suits instituted on Sunday, on the Fourth of July, on the First or Eighth of January, on the Twenty fifth of December, Twenty-second of February or on Good Friday, nor shall any arrest be made after sunset on any individual within his domicil.

Art. 763. But the Sheriff cannot execute the orders or judgments with which he may be charged in civil matters on the days and hours excepted by the preceeding provisions of this Code, nor arrest a debtor going to or returning from a muster of the militia."

Whatever be the import of the prohibition contained in these articles it cannot help out plaintiffs case.

The Sunday writs provoked no issue with Dreyfus' creditors, nor are the Monday writs exposed to attack from them in this form of action.

The legal color of the marshal's possession and detention excludes the imputation of unfair importation of the property into the Circuit Court's jurisdiction.

Waite's Digest, Vol. III, p. 17-19.

The inhibition against Sunday process could not avail Dreyfus, by whose act it had been precipitated. The intervenor must equally have improved the opportunity to stay by judicial process the removal of the goods.

Were the Sunday seizures void upon principles of public policy no disadvantage could arise from them to either party.

As little could they serve the purpose of holding the property

in waiting for the sheriff's levy, as support liens of the parties resorting to them.

In pari delicto potior est conditio defendentis et possidentis. Story Eq. Jur., Sec. 297–300, p. 316.

The legal feature cannot be separated from the void nature of an act, void upon principles of public policy, so as to support an action.

Quod ab initio non valet in tractu temporis non convalescit. Story Eq. Jur., Sec. 306, p. 325. Rev. C. C. La., Arts. 12; 19.

Had the Marshal's possession not been the custody of the Court, the plaintiff in error would quickly have connected the parties with illegal acts in an appropriate form of action.

The reservation by State Court to him meant nothing more.

He claims a lien which depends upon control of the property by the State Court.

We cannot lose sight of the circumstance that its judgment was incidental to the fact that it had not this control.

As no new question has arisen, that decision was final, and *res judicata*, and the case of Wiswall vs. Sampson, 14 How. 52, affirmed in Heidritter vs. Elizabeth Oil Cloth Co., 112, U. S., 303, covers the controversy.

Respectfully submitted,

J. C. GILMORE,

Attorney for William Adler and C. Lazard, defendants in error.

November, 1885.

124-131
124-131

Office Supreme Court U. S.
FILED.
DEC 16 1887
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM OF 1887.

No. 116.

CORNELIUS GUMBEL, Plaintiff in Error,

versus

JOHN R. G. PITKIN, MADDUX, HOBART & CO., KERBS & SPIES ET AL.

Brief on behalf of Hoffheimer & Bros.

The facts of the case and the pleadings are stated in the brief filed in behalf of Maddux, Hobart & Co. and other defendants, and the questions of law are so fully and ably presented that we feel that we can add but little to what has been said.

Plaintiff claims a lien upon the property which has been seized by the United States Marshal and sold by him and the proceeds have been distributed by the judgment of the Circuit Court. There was no levy upon the property—no actual seizure; such a seizure is essential, without which there is no lien created, and the court acquires no jurisdiction. The same rule prevails in courts of admiralty and of common law.

In cases of libel, there must be a valid subsisting seizure. The Brig Ann, 9 Cranch, 298–291. San Josepha, 10 Wheaton, 312, 326.

The Court described what is necessary to constitute a seizure: The dispossession of the owner, and the subjection of the property to the control and actual possession of the seizor.

There must be no uncertainty in the acts of the seizor, and nothing equivocal in the assertion of his power over the *res*.

The seizure gives jurisdiction to the Court. Cases cited: Silver Spring 1st Sprague Rep., 551; Freeman v. Howe, 2 4 Howard, 454; 200 Howard, 583; 13 Wallace, 406; 111 U. S. Rep., 364; 11 U. S., 302; 8 Blatchford, 165; 6 Robinson Rep., 345; 6 Louisiana An. Rep., 551; 9 An Rep., 311.

The question becomes, therefore, one of jurisdiction because jurisdiction accrues only when the officer of the Court has possession of the *res*. Plaintiff, therefore, has no basis for his action; a judgment obtained in such a proceeding would be a nullity. Pennoyer vs. Neff, 95 U. S., 713. This is not a question of practice. 10 Peters. 402; 104 U. S. 410.

The legal holidays, established in the Louisiana Code of Practice, art. 207 and Statutes. Act No. 44 of Extra Session of 1870 making 1st and 8th January, 12th and 22d February, 4th July, 25th December, Sundays and Good Fridays legal holidays; Act No. 42 of 1872 adding Mardi Gras, and No. 28 of 1874 adding 4th March.

The District and Circuit Courts transact business, issue process, hear and decide causes, and the executive officers of the Court discharge their usual duties on Mardi Gras and on the firemen's parade day, 4th of March, and the validity of their acts on those days have never been questioned.

The service of process of seizure by the Marshal is a ministerial act, and it has been often determined that such acts may be performed on Sunday. Butler vs. Kelsey, 15 Johnson Rep., 177; 20 Johnson, 140; 33 Barbour, 548; 18 Indiana, 153

And it has been held that a notice received on Sunday and retained is equivalent to a notice on Monday. 43 Vermont, 478; Rawlins vs. Overseers, 2 C. B. 72. Many judicial acts as the granting of injunctions. 64 Illinois, 243. The writs of attachment were issued by the circuit judge, and it will be presumed that he issued them upon proper showing of necessity or good cause.

2 Howard, 319; 15 Wallace, 51; 91 U. S. 127. In Harvey vs. Tyler, 2 Wallace, 343, the Court, affirming the decision in 10 Peters, 449, 471, says:

"In the case of Voorhees vs. The Bank of the United States, the validity of certain proceedings in attachment was called in question, on the ground that the record of the Court of Common Pleas, in Ohio, in which the proceedings were had, did not show certain steps which the law required." * * *

"Here was a case of special and stringent proceedings in *rem*, in the absence of jurisdiction over the person, where material provisions of the law, for the protection of defendant's rights, were omitted, so far as the record showed. * * *

"We do not think it necessary to examine the record in the attachment suit, or evidence that the facts alleged to have been omitted appear therein to have been done." * * *

"There is no principle of law better settled than that every act of a court of competent jurisdiction shall be presumed to have been rightly done, till the contrary appears."

The Court will notice that the Judge that issued the Sunday writ was not the Judge that rendered the decision from which the writ of error has been taken. It would have been necessary for plaintiffs in error to have shown to the latter Judge that the Judge that issued the writ did not have before him sufficient evidence of the facts which authorized the issuance of the writ.

The failure of the Judge who rendered the decision herein, to find the absence of those facts, and the failure of the plaintiffs in error to show by bill of exceptions or in some recognized method that the Judge who issued the Sunday writs did not have sufficient evidence before him, entails the presumption in this Court that the action of the Judge in issuing the Sunday writ was based upon the necessary evidence; that is, in the event that the proof of "imperious necessity" would justify the issuance of the writ, it must be conclusively presumed that the evidence of "the imperious necessity" existed and was the basis of the issuance of the Sunday writs.

The decision of the Judge of the District Court, sitting in the Circuit Court of the Western District of Missouri, affirmed by Judge McCrary, purports to be nothing more than an interpretation of the special statute of the State of Missouri, whose peculiar provisions are by it extended to the regulation of the

federal process. There is however, in Louisiana, no statute and no judicial declaration that would excuse the attempt by one Court to order its executive officer to seize property in the hands of another executive officer of another Court in the same State. That is no more possible in Louisiana between Courts of the same sovereignty than it is between Courts of different sovereignties. 14 An. 503 Twitty vs. Clarke.

A District Court for the Parish of Orleans, in a case of attachment, desiring to seize property in the custody of the sheriff of another parish must issue its writs, directed, not to its own sheriff, but to the sheriff who has the first possession. An interior Court of the same character of jurisdiction except as to amount (e. g. a Justice of the Peace for the Parish of Orleans) cannot order its constable (its executive officer), in a case within its monetary jurisdiction, to seize property held by the sheriff of the District Court of the same parish, and must issue its writ to said sheriff in order to effect a valid seizure.

Prior to 1855 there seemed to be no means by which an officer of a Justice of the Peace could levy upon property in the custody of a District Court of the same parish, and that absence of power had to be remedied by the statute of that year, which gave a Justice of the Peace the power to employ the sheriff of its parish to execute its writs. *Vide* Revised Statutes of Louisiana, 1870, sec. 2096.

The Court will notice that so far from the legislation of Louisiana being the same as that of Missouri it accords with the general jurisprudence which forbids one Court from interfering with the custody of another Court over property held by said other Court.

Had in the instant case the two Courts, whose jurisdiction over the conflicts, been Courts of the same sovereignty, but of different territorial jurisdiction, or of different monetary jurisdiction in the same territory, the writ depended upon by the plaintiffs in error, directed not to the executive officer of the Court first having possession, but to the executive officer of the second Court, would have been invalid and any levy under it ineffectual to create the lien.

To obviate the difficulty arising from this state of law the

Code of Practice of Louisiana authorized a Court to issue its writ to the sheriff of the parish where the property is situated. Code of Practice, Louisiana, Art. 642.

And this has been interpreted as applying to writs of attachment in the case of Pavrot vs. Delle Plane, 4th An. page 584.

In Tua vs. Carriere, 117 U. S. 208, plaintiff attached property of their debtors who made a cession to their creditors under the insolvent laws of Louisiana; the mere levy of writs of attachment gave no lien and it fell, the Court saying: "This is in accord with the general rule that when property is in the possession of one Court for administration it is not liable to be seized by process from another. Taylor vs. Carryl, 20 How. 583; Freeman vs. Howe, 24 How. 450; Buck vs. Colbath, 3 Wall. 334; Peoples' Bank vs. Calhoun, 102 U. S. 256; Krippendorf vs. Hyde, 110 U. S. 276." And further showed that if there was any defect or informality in the proceedings whereby the Court obtained jurisdiction of the property, application should be made to that Court to set aside its order, whereby it acquired possession rather than attempt to seize under process from another court.

The record shows that the first seizing creditors, Conery & Co., under the Monday writs were no party to the Sunday writs, and could not be affected by the action of other creditors. The plaintiffs are claiming to have seized the property in the hands of the marshal while he held the property under the writs issued on Sunday and on Monday.

The Judge, in his opinion in this case, referring to the case of Bates vs. Day, from the Western Circuit of Missouri, says: "Those cases are put by the Courts which decided them upon a statute of the State of Missouri, which was deemed to have been adopted by the practice Act of Congress, regulating the procedure in the Federal Courts. In Louisiana we have no such statute, and there is, therefore, no need to discuss the question as to what would be the legal consequences if one existed. In this State the Courts are to be guided by the doctrine which is settled by the cases of Hagan vs. Lucas, 10 Peters, 400, and Taylor vs. Carryl, 20 Howard, 583, to the ef